

1 IN THE UNITED STATES DISTRICT COURT
2 FOR THE SOUTHERN DISTRICT OF GEORGIA
3 BRUNSWICK DIVISION
4 CAMDEN COUNTY d/b/a)
5 CAMDEN COUNTY BOARD OF)
6 COMMISSIONERS,)
7)
8 Plaintiff,) CIVIL ACTION FILE
9)
10 vs.)
11)
12 ESTATE OF JOHNNY H. MURRAY)
13 d/b/a INTEGRATED SYSTEMS)
14 TECHNOLOGY, INC., and)
15 BONAVENTURE GROUP, INC.,)
16)
17 Defendants.)
18 - - -

19 The deposition of DANIEL ARNOLD taken for all
20 purposes permitted by the Georgia Civil Practice Act; all
21 formalities waived, excluding the reading and signing of
22 the deposition; before Angela B. Williams, CCR; taken on
23 March 21, 2008, at 3379 Peachtree Road, Northeast, Suite
24 300, Atlanta, Georgia, commencing at 10:40 a.m.
25

APPEARANCES

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ON BEHALF OF THE DEFENDANT ESTATE OF JOHNNY MURRAY d/b/a

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3 Cross-Examination:

4 By Mr. Allred 5

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6 Direct Examination:

7 By Mr. Miller 129

8 EXHIBITS

9 Defendant Page Marked/

10 Exhibit No. Description Identified

11 1 Daniel Arnold's Report 21/21

12 2 Daniel Arnold's Folder 21/21

13 3 Gussett/Redwell containing 29/27

14 Correspondence, Emails,

15 Engle Martin Reports,

16 AFEX 2000 Installation, Operation,

17 Maintenance and Service Manual

18 4 Notebook containing AFEX Installation, 30/26

19 Operation, Maintenance and Service

20 Manual, AFEX Technical Reference

21 Manual and NFPA 17 2002 Edition

22 5 Disk of Photos 31/30

23 (All exhibits above retained by Daniel Arnold. Copies not

24 attached hereto.)

25 Defendant Tijerina

26 Exhibit No.

27 1 Black and white copy of photograph */47

28 2 Black and white copy of photograph */47

29 *(Tijerina Exhibits not attached hereto.)

30 Attachments

31

32 Copies of photographs

33

P R O C E E D I N G S

10:40 a.m.

(Whereupon, the court reporter complied with the requirements of O.C.G.A. 9-11-28(d).)

MR. ALLRED: This will be the deposition of Dan Arnold being taken for purposes of discovery, cross-examination and any other purpose permitted by the Federal Rules of Civil Procedure. It's being taken by the Defendants. It's being taken by agreement of counsel though we have subpoenaed the witnesses. The deponent has indicated he would want to read and sign his deposition which is obviously fine and it's certainly fine with us that you do that before any notary as well. And if it's agreeable we will reserve all -- all objections except those going to the form of the question or responsiveness of the answer until first use of the deposition. Is that okay?

MS. AKINS: Yeah.

MR. ALLRED: I sound like blah, blah, blah -- Daffy Duck this morning. Sorry about that. All right. Could you please -- She's going to swear you in first.

(Witness sworn.)

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\\par

1 Whereupon,

2 DANIEL ARNOLD

3 was called as a witness herein and, having been first

4 duly sworn, was examined and deposed as follows:

5 CROSS-EXAMINATION

6 BY MR. ALLRED:

7 Q. All right. Did you bring your report with you

8 today?

9 A. I did.

10 Q. Did you bring your photographs with you today?

11 A. I did.

12 Q. That's good. Because I've never seen your

13 photographs before so I get to look at them today.

14 Could you identify yourself for the record,

15 please?

16 A. My name is Daniel Arnold.

17 Q. Okay. Do you go by Daniel?

18 A. Dan is fine.

19 Q. Dan is fine, okay. And what -- Give us an idea

20 of your educational background. Where did -- where did you

21 go to school?

22 A. I'm a fire protection engineer. I have a degree

23 in fire protection engineering from the University of

24 Maryland.

25 Q. Okay. Did you grow up in Maryland?

26

1 A. High school beyond, yes.

2 Q. Okay. And did you go to school beyond college?

3 A. No.

4 Q. Did you get a degree from Maryland?

5 A. I did.

6 Q. And that was College Park?

7 A. It is.

8 Q. Okay. Are you certified in Georgia or nationally

9 as a fire investigator or an explosion expert or a cause

10 and origins expert of any fashion?

11 A. No. I'm registered in the state of Georgia as a

12 fire protection engineer.

13 Q. Okay. All right. And how often does -- Do they

14 have continuing ed requirements?

15 A. They did.

16 Q. Okay. What does that run usually?

17 A. It varies by state but it's -- can range from 15

18 to 30 hours bi -- biannually or annually. It depends on

19 the state. I'm registered in several states so it varies.

20 Q. What did you do to further your training in fire

21 protection or inspection after you left college?

22 A. I participated in industry conferences and

23 technical seminars including those put on by the Society of

24 Fire Protection Engineers and the National Fire Protection

25 Association both provide that training and attended that

26

1 training over the course of my career.

2 Q. Now the report that you authored says it's from

3 Seneca Fire Engineering. Is that your company?

4 A. It is.

5 Q. Okay. How long have you operated Seneca?

6 A. Since 2001.

7 Q. Okay. Where were you before that?

8 A. I was with a fire protection engineering firm,

9 Rolf Jensen & Associates.

10 Q. All right. And where were they out of?

11 A. They're national but actually they have an

12 Atlanta office and I was -- I ran their Atlanta office.

13 Q. Okay. For how long did you do that?

14 A. I was with Rolf Jensen 15 to 18 years.

15 Q. Okay. In your capacity as a -- as a fire

16 protection engineer -- Is that what you call it fire

17 protection engineer?

18 A. That's correct.

19 Q. Okay. What -- give me an idea -- Break down for

20 me what you do with your time? I mean is it -- Do you go

21 inspecting before a loss, sort of loss prevention type

22 issues? Do you go out only after losses as a forensics

23 expert to identify cause of loss and be in a position to

24 offer your opinions about that? I mean what percentage of

25 your time is dedicated to what?

26

1 A. Well it's changed over the course of my career.

2 I've been involved and continue to do all aspects of fire
3 protection engineering including design, consulting with
4 owners, architects, other engineers and also do loss
5 investigation, some of which at some point in time may
6 involve litigation or providing opinions with regard to
7 those investigations. I don't keep track as to percentages
8 of one versus the other but later in my career and
9 currently the -- more of what I do is loss investigation
10 versus design which I did earlier in my career.

11 Q. Okay. Do you -- As an expert do you -- do you
12 maintain a file that keeps up with your -- where you
13 testify, where you go to court for purposes of the
14 federal rules?

15 A. I was instructed a number of years ago to keep a
16 list and that list I think is attached to my report.

17 Q. Okay. All right. And then I have -- This is
18 what was provided to me by Mr. Miller. It is a Summary
19 Report and then attached to that is an Appendix A, which is
20 your CV, and an Appendix B, which is your list of
21 testimony. Why don't you look through that real fast and
22 tell me is that what you've supplied so far by way of a
23 report, a CV, and a list of testimony?

24 A. (Witness complies with request of counsel.) Yes,
25 it is. Appears to be.

26

1 Q. And -- and are the -- is the list complete? Has
2 there been anything recently since you authored it?

3 A. I have provided one additional deposition that's
4 not currently on this -- this list.

5 Q. Did it have anything to do with a fire
6 suppression system on heavy equipment?

7 A. It did not.

8 Q. Okay. Prior to today, has any of your work
9 involved investigation of a fire on a piece of heavy
10 equipment where that piece of equipment's fire suppression
11 system did not work as designed?

12 A. I've been involved in an investigation of fire
13 equipment -- excuse me -- of a heavy equipment fire
14 involving fire suppression system where there were
15 allegations that that was the case and I participated in
16 the investigation.

17 Q. Okay. One or several?

18 A. Just one that I recall.

19 Q. What -- and what -- what kind of piece of
20 machinery was that?

21 A. It was a large Komatsu dump -- dump truck, very
22 large dump truck.

23 Q. Okay. Where was that?

24 A. It was in a mining operation in West Virginia.

25 Q. And did you give testimony in that case?

26

1 A. No.

2 Q. All right. Do you recall the -- who the
3 manufacturer of the fire suppression system was?

4 A. Yes.

5 Q. Who was that?

6 A. Ansell.

7 Q. And I think based on what you said it was alleged
8 that the fire suppression system did not work properly?

9 A. The fire suppression system is one aspect of the
10 investigation that was considered because it was -- had a
11 fire suppression system. And given the damage to the
12 equipment it -- it was inquired as to why that occurred
13 given the fact that the suppression system was there so the
14 investigation looked into those aspects.

15 Q. Do you know was there litigation that developed
16 out of that?

17 A. It's a recent -- recent case. There -- there may
18 be litigation but I'm not intimately aware of that.

19 Q. And who -- who have you -- Who are you
20 representing, which player in that dispute?

21 A. I don't know if there is a dispute yet because I
22 don't know that there's any litigation but I was retained
23 by I believe it was the insurance carrier for the mining
24 company --

25 Q. Okay.

26

1 A. -- who operated and owned the machine.

2 Q. Okay. Has there been an inspection of the
3 machinery since the fire?

4 A. Several.

5 Q. Okay. And has Ansell had an -- an engineer out
6 there as well?

7 A. Yes.

8 Q. Okay. All right. And have you developed any
9 opinions in that case that the fire suppression system did
10 not discharge?

11 A. No.

12 Q. Okay. Does that -- did that fire suppression
13 system on the dump truck work similarly to the AFEX system
14 on this compactor?

15 A. Yes, similarly.

16 Q. Okay. All right. And is that the
17 only -- are -- Is this case and that case in West
18 Virginia, are those the only cases that you've been
19 involved with in your career concerning a fire suppression
20 system on heavy equipment?

21 A. That I recall, yes.

22 Q. Okay. What sort of training, educational
23 background do you have in terms of how a fire suppression
24 system on a piece of heavy equipment works?

25 A. Well fire suppression systems generally work

26

1 similarly whether they're on fire protection -- well
2 whether they're on heavy equipment in a building or some
3 particular application so the functioning of the system are
4 not dramatically different from system type to system type
5 or hazard type to hazard type. My training and education
6 includes fire suppression systems generally and
7 specifically their application to particular hazards.

8 Q. Okay. Does it include application to heavy
9 equipment?

10 A. Yes. There was part of my training and school
11 included the application of fire suppression systems to
12 industrial equipment including heavy mobile equipment.

13 Q. Okay.

14 A. And they are standards on that. It's
15 the -- What's unique is the hazard, not necessarily so
16 much the system.

17 Q. All right. Well I guess, for example, were you
18 ever schooled in terms of -- you know, if, for example,
19 we're talking about a manual activation of a system, from
20 the moment that plunger goes down to the point dust or dry
21 chemical comes out of the nozzles what's going on in that
22 system? You can tell me that insofar as how that worked on
23 this fire suppression system, right?

24 A. Yes.

25 Q. Okay. Let's see now. Okay. And could I -- Do
26

1 you have another copy of your report?

2 A. I do.

3 Q. Great. And if you could pull it out that would
4 make it easier. That way I can -- we can be on the
5 same page.

6 MR. MILLER: I'll be right back.

7 MR. ALLRED: Okay.

8 (Whereupon, a brief recess was taken.)

9 BY MR. ALLRED: (Resuming)

10 Q. When was your first inspection of this machine by
11 the way?

12 A. In November of 2005.

13 Q. And who accompanied you or who else was there
14 with you?

15 A. Mr. Tony Tijerina.

16 Q. Okay. Anybody else?

17 A. I believe we were accompanied by Mr. Chris
18 Martin.

19 Q. Okay. How about Mr. Hershberger?

20 A. No, I did not meet with Mr. Hershberger
21 on -- on -- on that visit. He was not working.

22 Q. Have you ever met with him?

23 A. I have.

24 Q. And when was that?

25 A. On March 3rd, 2006.

26

1 Q. Okay. Is that in your report?

2 A. I can look and see.

3 Q. Oh okay. Well no, no, no. You're -- That's
4 fine. You're just looking at something besides your
5 report?

6 A. Yes, sir.

7 Q. Let's identify those first and then we'll get all
8 that marked up then. What -- what are you looking at
9 there, some notes you have from your visits?

10 A. Yes. I'm looking at, in answer to your last
11 question, my interview notes from an interview I -- I
12 participated in with Mr. Hershberger on March 3rd, 2006.

13 Q. Okay. And then what's next in your file there?

14 A. A list of -- The document provided to Mr. -- Mr.
15 Miller in terms of suggested areas and questions of inquiry
16 for information that I -- I thought would be useful in
17 obtaining from AFEX.

18 Q. Okay. And this is communication to you about
19 what type of inform -- or is this to AFEX?

20 A. From me to Mr. Miller.

21 Q. Okay. About what he should get from AFEX?

22 A. Correct.

23 Q. All right. Did that include the firing
24 mechanism?

25 A. Information concerning the firing mechanism,
26

1 yes, sir.

2 Q. I mean did you ask him to get you a fire --

3 A. Yes, sir.

4 Q. -- an example of a firing mechanism?

5 A. Yes, sir.

6 Q. Okay. Have you looked at the exemplar yet?

7 A. I did.

8 Q. Okay. I'm going to move around a little bit.

9 Why don't you put that to the side. And what's next in
10 your file? There's some yellow paper there.

11 A. These are handwritten notes of my interview with
12 Mr. Hershberger from which the typed notes were summarized.

13 Q. All right. So you took those March '06?

14 A. Correct.

15 Q. Okay. And then what's next?

16 A. A copy of an invoice that was provided to me
17 if I recall correctly by Mr. Chris Martin regarding
18 the -- the -- a repair that had been done to the compactor
19 in -- in April 2005.

20 Q. Okay. And then what's the next thing?

21 A. A photocopy of a sheet from the compactor
22 system's operation manual I believe that was provided to me
23 by Mr. Martin.

24 Q. And what page?

25 A. Page 23.

26

1 Q. Okay. And when did he provide that to you?

2 A. The same time he provided me this invoice.

3 Q. Do you remember when that was?

4 A. I think it was in November but I didn't
5 date them.

6 Q. Okay.

7 A. It's my best recollection.

8 Q. Is it your understanding then that in November
9 of -- by November of 2005 Mr. Martin had an operations and
10 installation manual for the fire suppression system?

11 A. No, sir.

12 Q. Just for the machine?

13 A. That's from which this copy was made of.

14 Q. Okay.

15 A. I -- I asked Mr. Martin if he had any such
16 information and he told me he did not.

17 Q. Okay. So that's just from the Caterpillar
18 manual?

19 A. Correct.

20 Q. And what -- what is the focus of that particular
21 page?

22 A. The alert indications associated with the
23 Caterpillar panel.

24 Q. Okay. Warning lights?

25 A. Correct.

26

1 Q. All right. And then what is next in your stack
2 there?

3 A. Some cryptic notes I made when I was reviewing
4 Mr. Smith's deposition.

5 Q. All right. And what is next?

6 A. Some notes I made on October 28th, 2005 of a
7 conversation I had with Mr. Miller.

8 Q. Okay. And next?

9 A. Just a -- Well it's a working timeline if you
10 will of events and dates that I kept as I became familiar
11 with this case over the what happened when. Just a
12 sequence of events if you will, general sequence of events.

13 Q. And let me -- I'm sorry. Let me bounce back
14 with you to the October 28th notes you have. What was the
15 gist of the conversation on October 28th?

16 A. I believe it was about my retention in this
17 matter and directed me to contact a Mr. Newman Stanley to
18 coordinate a site visit and provide me some names and
19 numbers.

20 Q. And did you call Mr. Stanley?

21 A. I don't have any -- I -- I may have to
22 coordinate that visit or Mr. Tijerina may have.

23 Q. Because I noticed on another set of your notes in
24 yellow there's a business card stapled to the top corner
25 and it looked like Mr. Stanley's business card; is
26

1 that right?

2 A. Yes.

3 Q. Does that mean you didn't get that card until

4 March? Are those cards of the people who were at the March

5 inspection, in other words?

6 A. I believe that's probably true, yes.

7 Q. Okay. So there's like Sally Akins, right?

8 A. There's Mr. Larry Helton, Mr. -- Ms. Sally

9 Akins, --

10 Q. Uh-huh (affirmative).

11 A. -- Mr. Randy Smith and Mr. Newman Stanley.

12 Q. All right. Now all those people were at the

13 March inspection?

14 A. Yes.

15 Q. Okay. But none of them except Mr. Tijerina were

16 with you at the November inspection?

17 A. That's my recollection, correct.

18 Q. Was Mister -- Do you know if I said to you

19 Lannie Brant or Lannie (different pronunciation) Brant,

20 would you know who I was referring to?

21 A. I don't -- in the -- I want to be complete.

22 There was a -- a piece of yellow paper stuck in here also,

23 some notes from a deposition I read concerning Mr. Austin

24 Latham.

25 Q. Okay.

26

1 A. I'm sorry. Your question?

2 Q. Do you remember having any conversations with a
3 gentleman named Lannie Brant, the director of the solid
4 waste division of Camden County?

5 A. I met with Mr. Brant I believe in order to get
6 access to the machine. I believe his -- he is a site -- he
7 was a site contact name given to me in my conversation with
8 Mr. Miller in October.

9 Q. Okay. So then in November you go and -- to meet
10 him? Did you sit down and talk with him?

11 A. Briefly for introductory purposes I believe so.

12 Q. Okay. Nothing substantive about what had
13 happened or what caused the fire or anything about the fire
14 suppression system in particular?

15 A. I think he provided me some -- some information
16 as to the -- the -- their expectations that the suppression
17 system didn't function, didn't discharge when the operator
18 attempted to do so.

19 Q. Okay. Did he have any discussion with you at all
20 about any other individuals who had been out before
21 November 11 to look at the machine? Did he identify
22 anybody?

23 A. I don't recall specifically if he did. He may
24 have.

25 Q. Now you've got some handwritten notes following
26

1 your reading of Mr. Latham's deposition and Mr. Smith's
2 deposition. Do you have any handwritten notes -- Well
3 strike that.

4 Did you read Mr. Hershberger's deposition?

5 A. I did.

6 Q. Did you read Mr. Martin's deposition?

7 A. I did.

8 Q. Did you read Mr. Brant's deposition?

9 A. I did.

10 Q. Do you -- Did you take notes for those?

11 A. I didn't take notes. I would have high -- I
12 highlighted and --

13 Q. Oh okay.

14 A. -- annotated on -- on the deposition transcripts
15 and I brought those with me today.

16 Q. All right. So -- so if we look through your
17 transcripts we'll see some highlighter and some notes that
18 you took?

19 A. Maybe some notes. Certainly some -- some
20 highlights of sections of the depositions for all the
21 depositions that I've read.

22 Q. Okay.

23 MR. ALLRED: All right. I'm just trying to
24 figure out how we're going to do this. Well I guess
25 what I'd like to do is if we can mark his whole folder

26

1 as Exhibit -- Let's see; have we marked anything yet
2 to your deposition? Let's -- let's mark his report as
3 Number 1 and we'll let you keep it because we have
4 copies. You can just put that on the bottom corner
5 anywhere.

6 (Whereupon, the court reporter
7 marked Defendants' Exhibit
8 No. 1 for identification.)

9 MR. ALLRED: And then we'll mark your folder as
10 you -- as you've just described its contents as Number
11 2.

12 (Whereupon, the court reporter
13 marked Defendants' Exhibit
14 No. 2 for identification.)

15 MR. ALLRED: What I'd like to do is get color
16 copies of those pages of your -- the depositions that
17 you've read that are highlighted, okay, so we can see
18 what's highlighted. All right.

19 BY MR. ALLRED: (Resuming)

20 Q. And you -- And -- and I understand you've got a
21 deposition -- you've got deposition transcripts from
22 Hershberger, Brant, Martin, Smith, and Latham?

23 A. Hershberger, Martin -- That's correct.

24 Q. Okay. Great.

25 MR. ALLRED: I don't see any point unless anybody
26

1 else wants me to mark them as exhibits as long as we
2 can get an agreement from you and get color copies of
3 the pages where he's either highlighted or made
4 notes on.

5 MR. MILLER: That's fine.

6 MR. ALLRED: Okay.

7 MR. MILLER: It might be the entire deposition.

8 MR. ALLRED: That's fine.

9 THE WITNESS: I'll be --

10 MR. ALLRED: I have to pay. Whatever it takes.

11 MR. MILLER: Okay.

12 MR. ALLRED: And if it's easier just to get color
13 copies of the whole thing, that's fine. Instead of
14 the manual labor of picking pages out if it's just
15 easier to run them through a color copier that's fine
16 or send it out as far as that goes. All right. You
17 probably want to leave those with -- with Alan.

18 BY MR. ALLRED: (Resuming)

19 Q. Okay. Let's see; prior to November 11, 2005, who
20 besides Alan Miller did you speak to about this project?

21 A. If anyone it would have been Mr. Tijerina.

22 Q. All right. Okay. And then at the dump, landfill
23 you had an introductory session with Mr. Brant and then I
24 think you said Mr. Martin took you to the machine?

25 A. That's correct.

26

1 Q. Now was the machine still up on the hill or had
2 they brought it back down to the shop or near the shop
3 by then?

4 A. It was not up on the hill. It was down off of
5 the hill as they called it.

6 Q. Was it still outside?

7 A. It was.

8 Q. Okay. Was it protected or covered?

9 A. I recall it may have been partially tarped but
10 maybe not. I would have to refer to photographs to -- to
11 see that.

12 Q. Okay. Do you know what efforts were
13 take -- undertaken by Camden County to, I don't know, for
14 lack of a better term weather in the compactor to put it in
15 a dry space where the elements wouldn't get to it?

16 A. No.

17 Q. Okay. Do you know in fact that it is -- for the
18 most of the time was left out on the hill in the rain or
19 the sun or whatever?

20 A. I just know where it was when I -- when I saw it.

21 Q. Okay. Did you take a camera with you?

22 A. I did.

23 Q. Okay. How many pictures, you know, roughly, did
24 you take that day of the 11th -- on the 11th of the
25 machine?

26

1 A. Probably 80.

2 Q. Okay. And you have those here with you today?

3 A. I do.

4 Q. All right. Could you pull those out for us,
5 please? Definitely want copies of those. In fact, is
6 there a way you can get digitals? Do you have them
7 digital? Can we get a copy of the disk? That's probably
8 the easiest way to do it.

9 MR. MILLER: Sure.

10 BY MR. ALLRED: (Resuming)

11 Q. Do you have hardcopy color copies of those?

12 A. I have hardcopy prints with me today.

13 Q. Okay. Good enough.

14 MR. ALLRED: And I'm sorry to do this. But do
15 you guys mind if we take about a five-minute break?

16 MR. MILLER: Not at all.

17 (Whereupon, a brief recess was taken.)

18 BY MR. ALLRED: (Resuming)

19 Q. What I'm trying to do first is figure out what
20 you've looked at and what you have. You have obviously
21 another gusset down there on the floor. So I need to
22 identify all the goodies that you've got and that you've
23 looked at as -- to form your opinions. So in addition to
24 what we've already been through, for instance, did -- did
25 you ever get a copy of the installation manual for the

26

1 AFEX system?

2 A. Yes.

3 Q. All right. Do you have that with you?

4 A. Yes.

5 Q. Do you have everything with you that you relied
6 on to formulate your opinions?

7 MR. MILLER: Well I'm going to object to the form
8 of the question. He has his file with him I believe
9 but I think that -- I don't know that all of that was
10 used to formulate his opinion so...

11 MR. ALLRED: Well he can tell me that.

12 MS. AKINS: He can answer the question.

13 MR. ALLRED: He can tell me that.

14 BY MR. ALLRED: (Resuming)

15 Q. I mean, in other words, you might have a textbook
16 up on the wall, you know, by professor whatever from
17 University of Maryland on fire inspection that you -- on
18 page 676 but I'm not talking about general text. I'm
19 talking about case specific documents. Did you bring them
20 all here?

21 A. Yes.

22 Q. All right. And so -- so, for example, there's
23 not -- there's not an electronically stored document that
24 you were sent, looked at, and it's not here?

25 A. Correct.

26

1 Q. Okay. Why don't -- You have one gusset

2 with you?

3 A. One gusset and a notebook.

4 Q. And a notebook. What's in the notebook?

5 (Whereupon, a discussion ensued of the record.)

6 BY THE WITNESS: (Resuming)

7 A. Did you finish with these photographs or --

8 Q. Not yet. But we're going -- For -- for purposes

9 of knowing that you have them at this point, yes, and then

10 we'll start going through them.

11 A. In the notebook is the AFEX Installation

12 Operation Maintenance and Service Manual that was provided

13 to me, the AFEX Technical Reference Manual, --

14 Q. Okay.

15 A. -- and NFPA 17, 19 -- 2002 Edition.

16 Q. Okay. And did you rely on at least portions of

17 all three of those to formulate any of your opinions in

18 this case?

19 A. Yes.

20 Q. Okay. And I -- I take it I see a lot of pink --

21 pink Post-it notes in there. Those are points of reference

22 or of importance for you?

23 A. (No response.)

24 Q. Or things that as you were reading through you

25 thought, well, these could be important so I'll mark them?

26

1 A. More so for ease of finding them as opposed to
2 any sort of category of importance.

3 Q. Okay. And we'll get into that as we go on.

4 What else is in your -- your gusset or redwell or
5 whatever -- whatever you call it?

6 A. A file that I've labeled correspondence and
7 e-mail.

8 Q. Okay.

9 A. A file that I have entitled Engle Martin reports.

10 A file that is labeled AFEX 2000 Installation, Operation,
11 Maintenance and Service Manual which is a duplicate manual
12 of the manuals contained in the notebook.

13 Q. Okay. And that one has blue Post-its so is that
14 to say that you went through it twice?

15 A. No. It just means that when I went through it I
16 put Post-its on it.

17 Q. Okay. But didn't you do the same to the copy in
18 the notebook?

19 A. I did.

20 Q. Okay. Did you go through page by page and
21 compare one to the other and make sure there were Post-its
22 on both page -- on the same pages?

23 A. No. But I -- I -- Doesn't mean I only went
24 through it twice.

25 Q. Oh no. It might be more than that.

26

1 A. I'm sorry. I was answering your question
2 literally.

3 Q. Okay. All right. The correspondence folder, let
4 me see; you've got a correspondence folder, you've got
5 a -- what was the other one -- oh Engel Martin report. Who
6 did that one?

7 A. (No response.)

8 Q. And who are Engle Martin?

9 A. Engle Martin is a -- I guess they're an adjusting
10 company.

11 Q. All right. Did they hire you?

12 A. No, sir.

13 Q. Mr. Miller hired you?

14 A. Yes, sir.

15 Q. All right. So these were adjuster reports that
16 were generated during their investigation of the case?

17 A. Presumably and provided to me.

18 Q. All right. Was -- was Mr. Steber, Joel Steber,
19 the guy who offered those?

20 A. Yes.

21 Q. Okay. All right. And those were provided to you
22 by Mr. Miller or by Mr. Steber?

23 A. Mr. Miller.

24 Q. Okay. Were those of any importance to you?

25 A. For background information and their -- the
26

1 photographs attached and some documents are attached were
2 information that was a part of the things I reviewed in
3 doing my -- my investigation.

4 Q. Okay. Why don't you tuck that back in the
5 redwell and then we'll just mark the redwell as exhibit
6 number -- are we up to 3?

7 MR. MILLER: There may be contained in that
8 redwell some attorney work product information and
9 we'll need to go through it in order to --

10 MR. ALLRED: Okay. I don't know if that exists
11 once you identify him as an expert.

12 MS. AKINS: Once you -- I think once you give it
13 to him that's gone.

14 MR. MILLER: Well...

15 MR. ALLRED: I mean that's something we fight
16 about -- I appreciate what you're saying, I really do
17 because I've been in that fight too. But --

18 MR. MILLER: I'm going to make the objection.

19 MR. ALLRED: Sure. For -- for the record it
20 would be our contention that any -- go ahead and mark
21 the redwell -- that -- that any correspondence that
22 you've shared with Mr. Arnold is subject to discovery.

23 (Whereupon, the court reporter
24 marked Defendants' Exhibit
25 No. 3 for identification.)

26

1 BY MR. ALLRED: (Resuming)

2 Q. Okay. And then why don't you --

3 MR. MILLER: The correspondence I shared with him
4 as far as Engel Martin, yes, but correspondence from
5 me to him I'm saying no.

6 MR. ALLRED: Yeah. And we're saying yes.

7 MS. AKINS: And we're saying yes to that.

8 MR. ALLRED: Okay. And this a sticker for Number
9 4. If you'd put that on your notebook
10 (Whereupon, the court reporter
11 marked Defendants' Exhibit
12 No. 4 for identification.)

13 BY MR. ALLRED: (Resuming)

14 Q. All right. And then -- Now you've got two
15 Wal-Mart envelopes of photographs there and one disk.
16 Is -- Are all the photographers that are in the Wal-Mart
17 packages on the one disk?

18 A. Yes.

19 Q. Could you please put that sticker number five
20 on -- Defendants' Exhibit 5 on the disk?

21 A. On the case I presume?

22 Q. Yeah. That's fine. It might start spinning kind
23 of catawampus.

24 \

25 \

26

1 (Whereupon, the court reporter

2 marked Defendants' Exhibit

3 No. 5 for identification.)

4 BY MR. ALLRED: (Resuming)

5 Q. All right. Had you ever heard of AFEX before

6 November 11 -- or before September 28, 2005?

7 A. I may have. I don't recall.

8 Q. Okay. Had you ever inspected one of their fire

9 suppression systems before?

10 A. I'm not sure.

11 Q. Okay. I think you said on November 11th you

12 spoke with Chris Martin. Did you make any notes of your

13 conversation that you had with Mr. Martin?

14 A. No.

15 Q. All right. Do you have a memory of anything he

16 told you about either the condition of the machine or what

17 he had seen others do to the machine since the fire?

18 A. No.

19 Q. Did you see -- Did you read his deposition?

20 A. I did.

21 Q. Did you see where he saw some people cut -- he

22 says cut wires or hoses with a knife?

23 A. Yes.

24 Q. Did you see evidence of that in any of your

25 inspections of the machine?

26

1 A. Once I reviewed his deposition I went back and
2 looked at my photographs based on areas that he described
3 and I saw what appeared to be photographic indications of
4 that work.

5 Q. Okay. And are you in a position today to
6 identify that in your photographs?

7 A. I could try, sure.

8 Q. Well -- well did you make notes of it --

9 A. No.

10 Q. -- when you did it?

11 A. No.

12 Q. Okay. So you read his deposition, had an
13 interest to go back and see the pictures and found what you
14 thought could be evidence to support that but you didn't
15 make notes of where -- of which photos those were?

16 A. That's correct. As I was reading deposition I
17 would go back to the photographs and -- and look.

18 Q. And so I guess would it be fair to say
19 you're -- you're fairly certain you could find the
20 photographs right away? You know what you're looking for
21 in that regard?

22 A. Reasonably confident I could do that.

23 Q. Okay. Why don't you take the time to do that?

24 A. (Witness complies with request of counsel.)

25 These are two examples of the photographs --

26

1 Q. Okay.

2 A. -- that I was referring to.

3 Q. Hold on. Set those aside if you would. And then
4 just go through all your photographs. Let's get them all
5 out here, all the ones that you think support the notion
6 that a wire or hose was cut or broken.

7 A. (Witness complies with request of counsel.)

8 (Whereupon, a discussion ensued off the record.)

9 BY THE WITNESS: (Resuming)

10 A. I pulled out ten photographs that are the types
11 of photographs that I would have referred to when I read
12 Mr. Martin's deposition identifying the areas that he
13 observed in his testimony that destruction was done to the
14 system during his -- during I guess it was the October
15 inspection by others.

16 Q. Okay. And you didn't see any others in
17 those -- in either of those two stacks?

18 A. I pulled the ones that I quickly identified. I
19 didn't study them in great detail but I pulled the ones
20 quickly that I think were the ones I would have gone back
21 and looked at as I doing his deposition in response to your
22 earlier question.

23 Q. Sure. All right. And those pictures by the way,
24 the -- the two envelopes of pictures that are on the disk
25 as Defendants' Exhibit 5, were all of those taken on
26

1 November 11, 2005?

2 A. I believe so, yes.

3 Q. Did you take any pictures on -- in March 3, 2006?

4 A. I don't think so. I think on March 3rd it was
5 principally in -- I participated in the interview of
6 Mr. Hershberger.

7 Q. Did you not participate in an inspection of the
8 machine on March 3, 2006?

9 A. I did.

10 Q. Okay. Incidentally were -- were any of the dry
11 chemical canisters open on March 3, 2006?

12 A. I'm sure there were.

13 Q. Okay. Do -- do you remember looking in them?

14 A. I -- I do.

15 Q. Okay. Was there dry chemical in them?

16 A. There appeared to be, yes.

17 Q. Were they almost full?

18 A. It -- it was caked. I don't know what almost
19 full means. We didn't weigh them. But there was certainly
20 substantive dry chemical remaining in the canisters.

21 Q. Well did it -- did it look like a -- a discharge
22 had taken place when you looked at how much content was
23 still in the canisters?

24 A. Not a complete discharge likely.

25 Q. Okay. And -- and something that could have been

26

1 just as consistent with a heat caused rupture of the seal
2 on those canisters, right?

3 A. Yes.

4 Q. Okay. And when I say heat I don't mean induced
5 by a sensor setting off the discharge of the system. I
6 mean heat building up pressure within the canister and
7 making the seal break. Is that what you understood me to
8 mean?

9 A. No. I understood -- understood something
10 different because there is no pressure in the canister but
11 I -- I believe we were communicating.

12 Q. All right.

13 A. Heat induced on the -- on nitrogen cartridges
14 associated with the canisters.

15 Q. Okay. All right. And that would be the
16 ten-ounce nitro bottles next to the canisters, not the
17 one-ounce up in the cab, right?

18 A. Correct.

19 Q. Okay. All right. Did you meet a fellow
20 named Orville Sanders during any of your inspections?
21 He -- he -- Just -- just so you know he -- he is not
22 somebody who's been deposed so...

23 A. That name is not coming to mind if I -- if
24 he -- I don't have his business card. I don't have any
25 notes of that.

26

1 Q. Okay. And then besides -- Did you understand
2 that Jim Hershberger was the operator at the time of
3 the fire?

4 A. At the time of the August fire, yes, sir.

5 Q. Yeah. And that -- And that's why you
6 interviewed him, right?

7 A. Correct.

8 Q. Okay. Well he was the -- Was he the operator at
9 the time of the April fire as well -- or I'm sorry -- March
10 fire, March 2005?

11 A. Yes. He was the operator from the prior -- the
12 prior event, yes.

13 Q. Okay. Was he the operator for the April
14 discharge of the system, the fire suppression system where
15 there was not a fire?

16 A. Yes.

17 Q. Okay. So you believe that Mr. Hershberger as far
18 as what you've been told or provided was the operator on
19 all three of those discharges -- or I'm sorry -- all three
20 of those incidents?

21 A. No. We may not have been communicating. I
22 believe Mr. Hershberger was the operator of the April 2005
23 event --

24 Q. Uh-huh (affirmative).

25 A. -- and then the August 2005 fire.

26

1 Q. Okay. Was the -- was the April 2005 event the
2 time when the system discharged without a fire or was there
3 a fire in April?

4 A. The August -- The April 2000 event was the time
5 it was discharged manually by Mr. Hershberger.

6 Q. Because of a fire?

7 A. Because of his observations of what he called a
8 heat plume.

9 Q. Okay. All right. So he --

10 A. He didn't observe any flames during that event.

11 So that's -- that's probably why we weren't communicating.

12 So I wouldn't call that -- He didn't call it a fire. He
13 called it an event. He manually discharged the suppression
14 system.

15 Q. And -- and would a heat plume be -- ignite a gas
16 or ignited hydraulic fluid? What's -- what's a heat plume?

17 A. As he described it, heat plume is basically
18 thermal waves that are emanating from a surface. It's a
19 visual movement of energy through -- through air that you
20 can discern by -- by seeing it.

21 Q. It's kind of like those -- like what you see like
22 the swirling of air when you look through volatile
23 chemicals like gasoline?

24 A. No, sir. That would be vapor. I would describe
25 it more closely to be the heat that would come off

26

1 the -- the -- the hood of your car on a hot summer day.

2 Q. Heat devils I think I've heard?

3 A. (Witness shakes head negatively.)

4 Q. You've never heard that before?

5 A. No.

6 Q. Okay. And -- and did you hear about a March

7 2005 event?

8 A. Yes. In reviewing documents I did come to know

9 about a March 2005 event which I believe was an automatic

10 unwanted discharge from a -- a non-fire.

11 Q. Okay. What -- what was your understanding of

12 what caused that discharge?

13 A. Only what I've read which -- that was perhaps a

14 short circuit on the detection line which caused the

15 automatic discharge of the system.

16 Q. And did you read that it was believed to have

17 been because the installation on the -- on the wiring had

18 worn through?

19 A. I don't remember the specifics other than it

20 was -- it was repaired and it involved a short circuit that

21 simulated a detection event that would have caused the

22 system to automatically discharge.

23 Q. And would that mean -- You don't remember the

24 term chafed wire in --

25 A. I -- Sorry. I remember the term chafed wire,

26

1 yes, sir.

2 Q. In -- in -- in association with that incident?

3 A. Yes.

4 Q. Okay. Did you see any broken lines or wires,
5 cut lines or wires, or any -- well I'll just leave it at
6 that -- cut or broken wires or lines, by lines I mean
7 hoses, in your March 2006 inspection that you had not seen
8 in November?

9 A. Not that I recall.

10 Q. You would have taken a picture of those had you
11 seen those, right?

12 A. If I thought they were important but March
13 in -- but by March 2006 --

14 Q. Yes.

15 A. -- the focus of my inquiry was to determine why
16 the suppression system didn't operate manually when called
17 for by Mr. Hershberger.

18 Q. Okay. Well wouldn't that include the scope of
19 the entire system?

20 A. Excuse me?

21 Q. Wouldn't -- wouldn't an analysis of that question
22 include the entire system, all the hoses running from
23 the one-ounce nitro to the -- down to the ten, from the ten
24 to the canisters? Wouldn't it include all those lines?

25 A. Certainly the lines you just described, yes.

26

1 Less important would be the distribution lines from the
2 canisters or the extinguishers to the suppression nozzles
3 recognizing the machine had been pulled down off a hill and
4 it had been -- had been moved. But the focus was why
5 didn't the system discharge when Mr. Hershberger attempted
6 to do so in August.

7 Q. Okay. Is it your belief that the one-ounce nitro
8 bottle did not -- I don't know what the word would
9 be -- explode, detonate, quickly release its contents when
10 he hit the plunger on the day of the fire?

11 A. My interview with Mr. Hershberger indicates that
12 it did not.

13 Q. Okay.

14 A. And that he because of his prior experience with
15 doing the same activity months before anticipated it to
16 respond the same way as it did previously. Poorly stated.

17 Q. I understand what you were saying.

18 A. And -- and his -- My interview with him was it
19 was clearly a very different feel and he didn't discern the
20 same resistance or whoosh or discharge of pressure as he
21 had during the April discharge.

22 Q. What was the -- Go ahead.

23 A. That's fine. Go ahead.

24 Q. What was the discharge of pressure he experienced
25 in April?

26

1 A. (No response.)

2 Q. And what I'm getting at is how can you -- how can
3 you say not having been there yourself whether that
4 discharge of pressure or whoosh of pressure was the
5 pressure coming from the activation of the larger bottles
6 and canisters as opposed to the one-ounce nitrogen bottle?

7 A. Based on his characterization of the difference
8 in the feel and operation of the manual plunger.

9 Q. Okay. What -- what would you expect on -- on a
10 system that functions from the moment you -- If you had a
11 stopwatch or even a timer that was wired into it, from the
12 moment the plunger sends the pin through the top of that
13 one-ounce bottle how much time goes by before you start
14 seeing white powder spewing everywhere?

15 A. Quickly.

16 Q. Within a second?

17 A. I haven't done the calculations to time it but I
18 wouldn't use the -- the stopwatch to time it. It would be
19 very quickly given the distance of hoses --

20 Q. Okay.

21 A. -- and the amount of pressure that should be
22 contained in the one -- what you're calling the one-ounce
23 cartridge or one-ounce cylinder and the distance to the
24 operators outside the -- outside the cab.

25 Q. Okay.

26

1 A. So it's a pneumatic operator and given the
2 configuration of how it functions it would be very quickly,
3 virtually instantaneous for the purposes of your discussion
4 I think.

5 Q. And -- and -- and I guess you -- you wouldn't use
6 a stopwatch with something like that because you couldn't
7 get your thumb down twice fast enough, could you?

8 A. I wouldn't see there would be any benefit in
9 doing that.

10 Q. Okay. So that from the -- from an operator's
11 standpoint, it might not be an engineer, if the system
12 discharges it's -- it's the total discharge that he sees
13 with the powder going everywhere, do you think that person
14 is also in a position to say -- to -- to differentiate
15 between a one-ounce bottle going off and not activating
16 the rest of the system versus the whole system going off
17 like it's supposed to?

18 A. Yes. Given his recent experience with operating
19 the plunger in the prior event and what he characterizes
20 the feel and the -- the fact that the plunger bottomed out
21 very quickly without any -- didn't take any force at all to
22 do that --

23 Q. Uh-huh (affirmative).

24 A. -- I think that difference is -- is telling and
25 important.

26

1 Q. Did he say he had to apply a greater force the
2 first time in -- in April?

3 A. What he told me was the plunger felt different.
4 It bottomed out easily. There was no resistance. It was
5 different than before. He hit it at least two more times
6 before he exited the cab.

7 Q. Do you -- Have you ever tried to manually set
8 off a system like this?

9 A. No.

10 Q. All right. So you're not aware of any testing
11 that's been done, for example, to see how much -- how much,
12 for example, foot pounds of pressure you need to make
13 the plunger pierce the -- the seal on the one-ounce
14 nitro -- nitrogen bottle if the system is intact versus the
15 same operation if there's a hole in one of the hoses
16 feeding the ten-ounce bottles?

17 A. That's correct. The only information I have on
18 that is Mr. Smith's testimony, it takes about 20 foot
19 pounds of force to -- to operate the -- the plunger.

20 Q. All right. And -- and when you're saying, you
21 know, in March my focus was to look at the -- you know, why
22 the manual activation didn't work, is that to say I'm
23 really focusing on the firing mechanism area of the
24 machine?

25 A. Well in -- in March is when I became -- had the
26

1 opportunity to interview Mr. Hershberger personally --

2 Q. Right.

3 A. -- and gather more information. I believe

4 Mr. Tijerina had spoken to him earlier. And based on that

5 information I thought it was important for me to be -- have

6 a more detailed inquiry of him.

7 Q. Okay. If the canisters still had content in them

8 and a lot, wouldn't that be relevant to why the system

9 didn't discharge as it was supposed to?

10 A. I don't understand that question.

11 Q. Well wouldn't that be a piece of the puzzle that

12 anybody trying to determine why the system didn't fire

13 properly or discharge properly, wouldn't that be relevant

14 to that analysis knowing that the canisters were -- had a

15 lot of powder still in them?

16 A. Well --

17 Q. Well let me -- Let's back up and do it this way.

18 A. Thank you.

19 Q. On a -- on a -- If the system had worked as it

20 was designed to and it -- it had discharged upon his

21 depressing the plunger, how much powder would you have

22 expected to find in the canisters on an inspection

23 afterwards?

24 A. If the system had functioned properly --

25 Q. Yes.

26

1 A. -- less than was there. Just a little -- a

2 little left in the bottom of the container --

3 Q. Okay.

4 A. -- assuming all portions of the system were

5 properly installed, were blown out and not plugged, the

6 nozzles operated properly in all aspects of system function

7 is intended. Most of the suppressant contained in the

8 container should have discharged through the distribution

9 system, through the nozzles into the engine compartment.

10 Q. All right. Have you ever worked a case where an

11 eyewitness' testimony did not square with the physical

12 evidence?

13 A. Sure.

14 Q. Okay. The fact that there was as much content in

15 the canisters as there was would suggest to you that the

16 system did not fire properly, right, discharge completely?

17 A. That all of the agent did not discharge

18 completely, that's correct.

19 Q. Okay. Now that doesn't mean that something in

20 the firing mechanism was the cause for that, right?

21 A. We know the system didn't discharge as it was

22 supposed to discharge, as it was intended to discharge both

23 manually or automatically prior to -- until later in the

24 event. The cause of that I don't know what -- what it is.

25 I haven't been able to determine to a specific -- or a

26

1 reasonable degree of certainty what -- what the cause is so

2 I agree with you in that regard.

3 Q. In other -- And all I'm trying to say is as we

4 try to rule out and rule in what could happen or, no, that

5 couldn't have happened, the fact that there was still

6 content, significant content of chemical in these canisters

7 doesn't mean that the nitro bottle did not go off, does it?

8 I mean because there could have been a rupture in a hose

9 between the two that would explain that, right?

10 A. There's -- Could be, you know, hypothetically

11 numerous causes why that would have occurred. It could

12 have been the nitrogen bottle at the shredder was

13 undercharged or empty. It could -- It could have been any

14 number of reasons why that wouldn't have occurred.

15 Q. Okay.

16 A. And as I indicated in my report based on the

17 information and changes to the system and information

18 available I wasn't able to determine what specific

19 cause -- what the specific cause was.

20 Q. Okay. So the one-ounce nitro bottle not being

21 charged or full could be a cause? Possibility?

22 A. That's one possibility.

23 Q. Okay. And that that possibility could be the

24 result of either a service issue or the fact that

25 somebody -- that the -- that the seal had been broken

26

1 sometime before this fire?

2 A. If the seal was broken sometime prior to the fire

3 and the system was installed properly and maintain -- and

4 functioning the system should have discharged.

5 Q. What if there was a hole in the line between the

6 one-ounce nitro bottle and -- and the powder and it -- and

7 it went off?

8 A. That would be another possible reason why the

9 nitrogen from the one-ounce bottle wouldn't have reached

10 the nitrogen canisters associated with the -- nitrogen

11 cylinders associated with the canisters to allow them to

12 discharge.

13 Q. Sure. So that's another possibility?

14 A. That's -- that's a possibility.

15 Q. All right. Now let's talk about -- Well

16 if -- if somebody removes the one-ounce nitrogen bottle

17 from the cab and they -- and they get the cap off and

18 there's no release of gas, I mean it's dead, what would

19 that suggest to you?

20 A. It would depend on the condition at which time

21 they did that.

22 Q. October 4, 2005.

23 A. That wouldn't suggest anything to me

24 because -- because it -- the nitrogen could have leaked out

25 through some other -- some path. So it would just indicate

26

1 to me there was no stored pressure between the nitrogen
2 container and the operators associated with the canisters.

3 Q. Okay. Same thing: As we go down to the
4 ten-ounce bottles that actuate the -- the canisters and
5 they go to take the cap off those and there's no whoosh or
6 sudden release of pressure, would that effectively indicate
7 the same thing that there was no stored gas in those
8 ten-ounce bottles anymore?

9 A. Sure because that stored gas is used as the
10 expellant for the -- for the extinguishing agent contained
11 in the extinguishers or the canisters we're calling them.

12 Q. Okay.

13 A. It's a stored pressure system -- It's not a
14 stored pressure system. Excuse me.

15 Q. Right. Let me take a look at your pictures
16 there. And by that for the record I'm talking about the
17 ten pictures that you've identified as those which could
18 support Mr. Martin's testimony that between September
19 8th -- or between the time of the fire and November 11th
20 damage had been done to the machine, right?

21 A. Yes. He pulled photographs that were -- that I
22 would have looked at when I read Mr. Martin's deposition as
23 to the areas he saw certain activities taking place.

24 Q. Okay. And these are the -- these are the
25 photographs that you've pulled?

26

1 A. That's correct.

2 Q. All right. Now look at this -- Let me show you
3 these black-and-whites, Defendants' 1 and 2. This was from
4 Mr. Tijerina's deposition. Are a lot of the photographs
5 that you have pulled essentially the same area, these --
6 these bottles with the valves on them or the entry ports?

7 A. Some of them are.

8 Q. Okay. Let's -- let's separate those then, okay,
9 because then we've got looks like another area. And you
10 had -- What is that, a third area? Let's just go ahead
11 and -- Okay.

12 You correct me if I'm wrong but of these ten
13 photos there are three which show an area depicting some
14 red canisters or bottles of some sort that look like
15 they're designed to be pressurized?

16 A. Those are the agent canisters, yes, sir.

17 Q. Okay.

18 A. And the associated nitrogen cartridges.

19 Q. All right. With the lines that feed them; is
20 that right?

21 A. Correct.

22 Q. All right. Now in all three of these photographs
23 there is a -- one of the lines is completely severed
24 through, right?

25 A. Correct.

26

1 Q. Okay. And then --

2 A. May I see it to make sure?

3 Q. Sure. And -- and in -- in one of the severed
4 ends there's a lot of light or light-colored material.
5 What is that?

6 A. I would suspect that would be dry chemical agent.

7 Q. Okay.

8 A. Actually only two of these photographs are as you
9 described them.

10 Q. Which one is not?

11 A. The last one.

12 Q. Let me see? Why isn't that? Isn't that hose
13 right there the fracture?

14 A. I'm sorry. I thought you were referring to this
15 disconnected hose?

16 Q. Okay.

17 A. Okay. Correct.

18 Q. All right. So -- But you're saying that picture
19 in your hand -- in your left hand now actually shows a
20 second thing that is broken or not connected?

21 A. Not connected.

22 Q. And where is that?

23 A. (Indicating.)

24 Q. Okay. And what is that -- What would you call
25 that?

26

1 A. I believe that's the discharge port from
2 the -- one of the agent canisters.

3 Q. On Defendants' Exhibit Number 1 from Mr.
4 Tijerina's deposition, is that this site right where I'm
5 pointing to, this connection?

6 A. Appears to be, yes.

7 Q. Okay. So are you saying that the -- Where this
8 elbow fitting is going into the bottom of the tank, you're
9 saying those aren't connected or can you tell?

10 A. To study this a little closer I really can't
11 tell. It may in fact be connected --

12 Q. Okay.

13 A. -- to that discharge port.

14 Q. All right. And then two pictures are taken of
15 the one-ounce nitrogen bottle and the squib area to show
16 the bent pin in that -- in that connection and the fact
17 that the harness is disconnected, right?

18 A. That's correct.

19 Q. Okay. Were they cut or just not plugged back in?

20 A. There is no cut in that photograph that
21 the -- not plugged back in and the pin is bent.

22 Q. Okay. And then on the -- on the three photos we
23 had just been talking about, did it look to you like
24 this -- this line here was cut or just broke because of a
25 torque issue or some other issue?

26

1 A. It was separated and it was separated location as
2 described by Mr. Martin.

3 Q. Well how did that happen? Mr. Martin said
4 someone took a pocket knife and cut them.

5 A. That may have been. I wasn't there.

6 Q. Right. But I -- What I'm asking you is as an
7 expert is that as you look at those -- that fracture site
8 is that consistent with -- the damage you see there
9 consistent with a knife cut?

10 A. I don't know that I've made that -- that -- that
11 discrete analysis of the surface characteristics of that
12 separation. The orientation of the hoses relative to each
13 other as -- as compared to -- to other photographs and
14 Mr. Martin's testimony was, okay, well that must be the
15 area that he was describing when -- in his testimony. I
16 haven't studied that to determine if it was a -- made by a
17 knife or -- or some other sharp tool or some other method.

18 Q. Did -- did you -- Did you read in Mr. Martin's
19 deposition where he said that the two guys he was talking
20 about didn't bring any tools with them and that they cut
21 lines so they could take the canisters out?

22 A. I do remember him saying that, yes, sir.

23 Q. And would -- would -- would cutting that line
24 enable them to take a canister out?

25 A. Yes.

26

1 Q. I mean isn't it still connected at the bottom?

2 A. In that photograph it is.

3 Q. Okay. Well that was taken on -- in November,

4 right, --

5 A. Correct.

6 Q. -- this photograph? So it was taken after the

7 October visit?

8 A. Correct.

9 Q. Okay. All right. So the edges of that fracture

10 site look all worn and like -- like they were brittle at

11 one time and there's a bunch of flaking on the edges,

12 right?

13 A. The photograph shows what it shows.

14 Q. Well I mean can you -- is -- is what I said not

15 accurate?

16 A. No. I -- Like I said, I haven't studied the

17 surface areas of those -- of those hoses for any analytical

18 purposes as to what tool may have been used, if any, to

19 cause that separation.

20 Q. That separation is just as consistent with

21 somebody leaning on it, isn't it, if those hoses were in a

22 brittle condition?

23 A. Again, I haven't studied that --

24 Q. Okay.

25 A. -- in any detail.

26

1 Q. All right.

2 A. As -- Other than the location as testified to by
3 Mr. Martin.

4 Q. Okay. Now you've -- you've got two pictures that
5 look like a bracket and a U-bolt with some nuts on them
6 that I guess are designed to hold one of the tanks in
7 place; is that right?

8 A. Correct.

9 Q. Is that a -- is that a regular fire extinguisher,
10 that one, or is that one of the canisters, the red tank?
11 Do you remember what kind of tank that was?

12 A. I believe it's a -- one of the canisters.

13 Q. Okay. Where was that on the machine; do you
14 remember?

15 A. It's on the deck outside of the operator's cab.

16 Q. And what appears to be broken to you?

17 A. Nothing appears to be broken. The -- the nut
18 holding the U-bracket appeared to be -- be loose so I -- I
19 took photographs of that loosened.

20 Q. Okay. Do you know how far tight would have been?

21 A. (No response.)

22 Q. I mean I'm trying to get an idea of how loose it
23 was. Would -- would a quarter turn have tightened it or
24 are we talking about a big distance?

25 A. I -- I think you can get a sense of that by

26

1 looking at the thread -- the thread travel indications on
2 the -- on the bare threads on the inside of the bracket and
3 the space between the U-bolt and the surface of the
4 canister. I haven't studied that in great detail but it
5 appears to be four or five threads perhaps.

6 Q. But can we also get an indication of that
7 on -- because of the wear on the side of the canister that
8 this looks like something that probably resulted from
9 vibrations over a period of time?

10 A. I'm not sure that that's true or that would just
11 be markings from the insertion and removal of that canister
12 when it was recharged. I haven't studied that in great
13 detail.

14 Q. Okay. Can -- can these fasteners come loose
15 because of vibrations?

16 A. They probably shouldn't because they're
17 designed -- the support of those structures are designed
18 for installation in heavy equipment which gets a lot
19 vibration. And it appears to be a locking type bolt if
20 properly torqued and installed but I guess in certain
21 circumstances it -- it -- it's a possibility but it
22 shouldn't happen.

23 Q. Would you think that an operator would hear that
24 rattling?

25 A. I haven't studied it -- there -- how much
26

1 rattling it would -- whether it would rattle or not.

2 Q. Okay.

3 A. It's just an observation when I --

4 Q. I understand.

5 A. -- did my site investigation.

6 Q. I -- I just want to be sure I cover all the

7 bases. All right.

8 And then you've got two pictures showing it looks

9 like a hose but then there's something else smaller that's

10 coming from behind it. It looks like a hose that comes

11 from the cab, out the cab, and then onto the decking

12 somewhere; is that right? You tell me where that is?

13 A. It appears to be a distribution hose --

14 Q. Okay. And is --

15 A. -- given its size.

16 Q. And is that coming from the cab?

17 A. I don't recall.

18 Q. What is -- You don't know what that apparatus

19 is, the square kind of metal framework behind it?

20 A. I don't know if it's going into the cab or if

21 it's -- it's passing near the cab, is -- is my point.

22 Q. Okay. Why would a line just pass the cab as

23 opposed to come out of it from the manual activator; do you

24 know?

25 A. I don't believe I said that was a manual

26

1 activator line.

2 Q. No, I didn't -- I didn't say you did. I'm

3 asking -- you said --

4 A. I'm sorry.

5 Q. You said you couldn't tell whether it was a line

6 that just passed the cab or whether it was coming out of

7 the cab, right?

8 A. The photograph that I had in my hand at

9 the time, --

10 Q. Yes.

11 A. -- yes, sir.

12 Q. Let me get the one. Where is it? These two

13 photographs, right? Well I just picked these up because I

14 was going to ask you a question. But look at any of them

15 you want. I don't think they're going to help you but...

16 A. I believe that may, in fact, be the

17 line -- the -- the line going into the floor of the cab to

18 the manual actuator.

19 Q. What is the thing that's running -- I see a hose

20 and it looks like a severed hose but then there's a -- a

21 metal or something, silvery metallic looking line there.

22 What is that?

23 A. I suspect it's the -- it's the detection line

24 going to the squib harness.

25 Q. Okay. So a wire? Is it the electrical wires?

26

1 A. Yes.

2 Q. I mean you tell me. What -- what words would
3 you use?

4 A. Wire is fine.

5 Q. Okay. For example, on the squib, there's the
6 squib harness coming from the top down, right? Or is this
7 it down here?

8 A. That's the squib harness.

9 Q. Okay.

10 A. That's the --

11 Q. What is this up here?

12 A. I don't recall.

13 Q. Okay. So you think that this silver -- or
14 you -- I'm not trying to be unfair. I'm really -- I'm
15 just trying -- is that -- Would you call that silver?

16 A. Silver is fine.

17 Q. Okay. That line I'm pointing to, do you believe
18 that would be the same line coming from this squib harness?

19 A. I believe so.

20 Q. Okay. And that that hose would be this hose that
21 connects just below where the squib harness would typically
22 connect?

23 A. Correct.

24 Q. Okay. All right. And I see that they are
25 severed. Obviously you -- you point that out. Do you see

26

1 anything about how they're -- Well was the wire severed or
2 just the hose?

3 A. At that location doesn't appear the wire is
4 severed.

5 Q. Okay. And does the hose where it's severed
6 appear to you to be a fracture that was caused by somebody
7 cutting it with a knife?

8 A. Again, I haven't studied the surface area to
9 determine if it's a hard cut or some other fire induced
10 damage or something else.

11 Q. How would you do that?

12 A. I haven't considered how I would do that. I
13 don't know.

14 Q. Okay. Do you -- do you -- do you ever do any
15 forensic examinations where you have to send the work out
16 to a lab to do?

17 A. I have had to involve labs in some of my work,
18 yes.

19 Q. Okay. Do you ever send a -- stuff out for
20 electron microscopic kind of --

21 A. Microscopy?

22 Q. Yes.

23 A. There have been times where that's been used.

24 Q. Okay. All right. Now aside from finding
25 photographs that appear to be -- Well let me take that
26

1 back too. You -- you correct me if I'm wrong. I'm -- I
2 really am just trying to get the truth. I understood you
3 to say these were pictures you pulled because they were
4 pictures that showed areas where Chris Martin had said in
5 his deposition that he saw these guys cutting. Is that
6 accurate?

7 A. Yes.

8 Q. Okay. So you recall in -- in Chris Martin's
9 deposition him talking about cutting lines up near the cab?

10 A. No. Actually he -- he was talking about cutting
11 lines near the canisters. So I wouldn't put these two
12 photographs in that category.

13 Q. Okay. Then there was -- What -- what is this a
14 picture of here, the one you're looking at now? I see a
15 severed hose but I -- I don't know where it is.

16 A. That's in the engine compartment and -- and
17 that's why I set it in this pile because I believe
18 Mr. Martin testified in his deposition he saw them cutting
19 hoses near the -- near the canisters if I recall correctly.

20 Q. Okay. So near the -- Do you recall him saying
21 that he saw them cut a hose in a -- or saw them cut a wire
22 real close to the battery lead?

23 A. Yes.

24 Q. Okay. Did you find any cut or fractured wires
25 near the battery leads?

26

1 A. I don't have any photographs of that, no.

2 Q. Okay. And this shaft here where -- what -- what

3 shaft is that there? Do you see what I'm talking about?

4 A. I don't know what shaft that is but this is

5 inside the -- inside the compartment --

6 Q. And I'm --

7 A. -- of the engine compartment.

8 Q. What I guess I'm trying to get at is there

9 anything about that picture that would orient you to

10 indicate where in the compartment that is?

11 A. With other photographs you may be able to

12 but not --

13 Q. Okay.

14 A. -- standing by itself.

15 Q. Okay. All right. What is this big structure on

16 the top of that picture?

17 A. It looks like a -- it could be a header cover.

18 I'm not sure. I would have to --

19 Q. Okay.

20 A. -- review the other photographs to locate it any

21 better than that.

22 Q. Are you able just to -- Are you able to look at

23 this picture the -- and even orient it in terms of which

24 way the photographer -- you know, which way is up in terms

25 of where the photographer was standing? Well you were the

26

1 photographer. In terms of where you were standing?

2 A. I believe it's pointing down based on the lower
3 left-hand corner of what appears to be ground but, again, I
4 would have to refer to other photographs to be really
5 accurate about that.

6 Q. So hold it in the way you think it's correctly
7 oriented, if you would?

8 A. Again, I'm not comfortable doing that.

9 Q. Okay.

10 A. And -- and --

11 Q. You can't tell?

12 A. That's correct.

13 Q. Okay. All right. Tell me what were -- Do you
14 have any opinions as we sit here today that the fire
15 suppression system on this machine was manufactured
16 negligently?

17 A. No.

18 Q. Do you have an opinion today that the fire
19 suppression system was designed negligently?

20 A. No.

21 Q. Do you have any opinions that would support a
22 notion or finding that AFEX acted negligently in any way?

23 MR. MILLER: Objection to the form. Go ahead.

24 BY THE WITNESS: (Resuming)

25 A. I believe AFEX in their October inspection didn't

26

1 undertake that inspection as they should have.

2 Q. Okay. I'm sorry. And we'll get to that. Bad
3 question. Do you have any opinions whether AFEX did
4 anything negligently prior to the fire?

5 A. No.

6 Q. Okay. You have no opinions about that? And as I
7 understand it you have no opinions about that in part
8 because the machine had been altered or affected in such a
9 way that you believe you couldn't get a fair read of -- of
10 the system?

11 A. I believe that contributed to that, yes, sir.

12 Q. Okay. Another cause for that might just be the
13 extent of the destruction of the machine because of the
14 fire itself; is that right?

15 A. Certainly anytime there's fire damage to a piece
16 of equipment or a -- or a structure that plays a role in
17 the available information post fire.

18 Q. When you just said that potential altering or
19 changes in the status of the machine could be a
20 contributing factor to your not being able to develop an
21 opinion, what are the other contributing factors that you
22 might have had in mind?

23 A. Certainly any disturbing of the -- of the
24 evidence or the scene or the site that occurs after the
25 fire has been extinguished and overhauled by the

26

1 fire department.

2 Q. Does -- Is there a lot of pressure from a pump?

3 Would they have used dry chemical or water; do you know?

4 A. I would suspect they would have used water.

5 Q. Okay. And that comes out pretty high-pressure?

6 A. It can.

7 Q. Okay. And for some -- And is it your

8 understanding this fire had burned a long time and very

9 hotly before the fire department got there?

10 A. As described the -- the compactor was heavily

11 involved in fire upon the arrival of the fire department.

12 Q. Okay. Would it be fair to say that certain parts

13 would have been more brittle by that point when the fire

14 department got there or more susceptible to damage because

15 of pressure -- pressurized water being placed on it than

16 they would have been had the fire not occurred?

17 A. I think that's fair.

18 Q. Okay. Are you aware of any evidence in this case

19 that shows that any of these items that you've shown here

20 in your photographs, the ten pictures, were not broken or

21 fractured at some -- at some point after the fire but

22 before these pictures were taken?

23 MR. MILLER: I'll object to the form.

24 MR. ALLRED: Okay.

25 \

26

1 BY MR. ALLRED: (Resuming)

2 Q. Is that --

3 A. Try that again, please?

4 Q. Sure. You showed me these pictures of things,
5 well look at this hose is broken, look at that -- you know,
6 that one. And I guess what I'm asking you is do you have
7 any photographic evidence or other evidence to indicate
8 whether this damage, any of this damage you're showing me,
9 occurred after the fire and not as a result of the fire?

10 A. I believe Mr. Tijerina informed me -- has
11 photographs showing that some of these conditions did not
12 exist during his earlier inspection of the machine when I
13 was not in attendance. He informed me, well, in October
14 this is different than when he left it.

15 Q. Okay. Did he -- and did he -- Well he was with
16 you during your inspection, right?

17 A. Correct.

18 Q. Did he point out those places like your -- your
19 picture of the canisters with the fractured lines right
20 above the canister, did he point that out to you?

21 A. He may have. I don't recall specifically what
22 areas he pointed to but he -- he certainly observed that it
23 was different.

24 Q. Okay. Well and -- and in that regard I mean
25 wouldn't that -- was there some sort of ex -- I don't know,

26

1 not bad expletive but just communication of surprise, look,
2 hey, this is broken, this wasn't broken before? Do you
3 remember any sort of statement like that from Mr. Tijerina?

4 A. I don't recall a specific statement but I think
5 he was surprised that it had changed.

6 Q. Okay. And -- and -- and that was with regard to
7 what's depicted in these three photos of the hose with what
8 might be the discharge powder in one of the ends, right?

9 A. Again, I don't recall specifically what
10 point -- areas he pointed out to me but those -- that would
11 be among them I think.

12 Q. So -- Okay.

13 A. Because we got to those photographs from
14 Mr. Martin's deposition.

15 Q. Right.

16 A. Not from any obser --

17 MR. ALLRED: Yeah. He's -- he's right.

18 MR. MILLER: Okay.

19 BY MR. ALLRED: (Resuming)

20 Q. These were the ones he pulled when -- when he was
21 identifying damage after he had read Mr. Martin's
22 deposition? That's why we have these ten pictures on the
23 table, right?

24 A. Correct.

25 Q. Okay. And -- and so now as we talk about what
26

1 did Mr. Tijerina show you, hey, that's not the way it was
2 on September 8, you can't tell me for certain which of any
3 of these or others were -- that -- that he told you about?

4 A. Correct. That would -- Mr. Tijerina would be
5 better equipped to say that.

6 Q. Okay. Now if Mr. Tijerina identifies only the
7 hose that's on top of this canister in these three photos
8 and the squib harness not being connected with the pin
9 bent, do you remember any other areas he showed you besides
10 those two?

11 A. As I've answered I don't remember specifically
12 what areas he would have showed me.

13 Q. Okay. I'm nailing you down to make sure we got
14 that on record.

15 All right. All right. Is there any way to know
16 by the condition of some of the machine components how hot
17 the fire got?

18 A. There's a -- Yes, you can use some of
19 that, sure.

20 Q. I mean some of the components melt at higher
21 temperatures or deform at higher temperatures than
22 others, right?

23 A. Correct.

24 Q. So you could at least come up with a
25 range, right?

26

1 A. That's correct.

2 Q. Okay. And has -- have you undertaken to do that
3 at all?

4 A. I have not.

5 Q. Okay. For instance, would you imagine there's a
6 temperature at which braided steel hoses even become
7 brittle?

8 A. Not as you've asked that question. Temperature
9 on braided steel hoses become -- would become softened and
10 would lose their -- and then subsequently may become
11 brittle but while heated they wouldn't necessarily become
12 brittle.

13 Q. You're right. Let me withdraw the question.
14 Is there a temperature at which a braided steel
15 hose would get so hot that once it cooled to ambient
16 temperature of Camden County, Georgia in the fall that it
17 would be brittle?

18 A. The effects of fire can embrittle components and
19 I would expect rubber jacketed hose with steel braiding
20 inside would be among them.

21 Q. Would -- would -- would this hoses that
22 are -- the rubber jacketed braided steel hoses be by
23 appearance similar to the hydraulic lines on the compactor?

24 A. I don't know.

25 Q. They're both pressurized hoses, right?

26

1 A. Correct.

2 Q. Okay. So if I understand your testimony so

3 far -- you don't -- Well let -- let me strike that.

4 Do you have any opinions as -- that would

5 indicate that IST or John Murray doing business as

6 Integrated Systems Technology was negligent?

7 A. I believe there's evidence that Mr. Murray and

8 IST failed to follow the recommendations contained in NFPA

9 17 and in the related AFEX manuals concerning his

10 recharging and inspection of the systems.

11 Q. Okay. And -- and you've got that bulleted in

12 bullet points in your conclusions, right?

13 A. I believe so, yes, sir.

14 Q. So, for example, you've got with regard to the

15 April 26, 2005 work by AFEX, number one, conducted this

16 work in accordance with the maintenance requirements of

17 NFPA 17 and the AFEX 2000 Installation and Maintenance

18 Manual. In other words, that's what they should have done,

19 right?

20 A. Correct.

21 Q. What is the evidence you have that they didn't?

22 A. No document that I have seen indicates that

23 information provided to Camden County was consistent with

24 those requirements as the recommendations for maintaining

25 the system.

26

1 Q. Would that be kind of like an -- an inspection
2 report?

3 A. That would be kind of like an inspection report
4 with recommendations and other information as indicated in
5 the AFEX Manual and in NFPA 17.

6 Q. Okay. Have -- have you seen this? This
7 is -- this is from the automatic discharge episode
8 that -- where there was no heat plume or fire related of
9 March 2005. It's an inspection report by IST.

10 A. I -- I did just see this. I saw mention of this
11 in one of the depositions and I just -- just did see this.

12 Q. Do you see in March at the bottom that, you know,
13 he's got these little blanks he ticks off and at the very
14 bottom it says -- and I forgot the term -- what -- what
15 kind of manual?

16 A. Service.

17 Q. Service manual and it says -- it has a choice of
18 acceptable or not acceptable and it says -- And, in fact,
19 that's the only one ticked off as not acceptable, right?

20 A. Yes.

21 Q. Okay. And this was provided to us by Camden
22 County which means they got it. Well whose responsibility
23 is it to get the manual if there isn't one?

24 A. I think it's the responsibility of Integrated
25 Systems to inform them that not only is the manual required

26

1 but the reason the manual is required which is that there
2 are maintenance requirements and inspection requirements
3 for the suppression system.

4 Q. Okay. How do you know that wasn't done on
5 for -- on, for example, March 14, 2005?

6 A. There's no indication this -- in this document
7 and I see no testimony that that information was conveyed
8 to Camden County.

9 Q. Okay. All right. All -- all you see is that
10 obviously well Camden County has at least notified that
11 there isn't a service manual or the service manual is in an
12 unacceptable condition?

13 A. Correct.

14 Q. Okay. And the service manual was -- itself would
15 then have the verbiage about how to inspect and what's
16 required by way of inspection, right?

17 A. Yes, it would.

18 Q. Okay. Did you ask anybody associated with Camden
19 County why after March 14, 2005 they did not undertake to
20 try to get a service manual?

21 A. No, I asked Mr. --

22 Q. Brant?

23 A. No.

24 Q. Martin?

25 MR. MILLER: Martin?

26

1 BY THE WITNESS: (Resuming)

2 A. -- thank you -- Mr. Martin whether or not he had
3 any manuals or information on the suppression system during
4 my November inspection and he --

5 Q. And he said no?

6 A. -- informed me did not.

7 Q. Okay. And -- and was there any discussion at all
8 about what he might or might not have -- what -- what he
9 did to try to get one?

10 A. No. I also asked him for any records that they
11 had on the inspection and testing and -- and service of the
12 suppression system ongoing as well as the associated with
13 prior system trips that he relayed to me occurred.

14 Q. Okay.

15 A. And it was from that discussion that I received
16 the documents we looked at earlier concerning the April
17 20th repair to the -- to the compactor.

18 Q. And was that a purchase order requisition
19 or -- let me -- Well hold on there. Let me withdraw it
20 and I'll just -- or an invoice rather -- let me get you...
21 All right. Here's an invoice that Mr. Miller
22 provided me for April 26, 2005. That's in your notebook,
23 isn't it, or I mean your folder?

24 A. This document I became aware of is an attachment
25 to the Engle Martin report. This is not the document I'm

26

1 referring to.

2 Q. That's not the document?

3 A. That was provided to me by Mr. Martin.

4 Q. Okay. That's not the document you're
5 referring to?

6 A. It is not.

7 Q. Okay. What -- what -- what sort of document
8 was it?

9 A. It was an invoice indicating the date of his
10 purchase of items needed to repair the compactor after the
11 April event. It was from that document I was able to get
12 a -- a general timing of when that event occurred.
13 Specifically it was a invoice for hydraulic hose and two
14 crimps on April 20th, 2005.

15 Q. Well and -- So let me -- let me see if
16 I'm -- I'm straight on this. You're aware of a March
17 incident in 2005 where there was not a heat plume or a
18 fire, right?

19 A. Only from what I reviewed in the record that that
20 there was a -- and what you just showed me in the
21 inspection report, a system recharge in March 14th of 2005.

22 Q. But you don't remember Mr. Martin or one of the
23 other Camden County employees who's -- who have been
24 deposed testifying that there was a dry fire or -- or an
25 automatic discharge of the system in the Spring of 2005

26

1 that was not -- not associated with a heat plume or at

2 least they thought it wasn't?

3 A. Yes, I recall that.

4 Q. Okay. Outside of the fact that there's a

5 document in front of you, you recall that separately from

6 the document?

7 A. That's correct.

8 Q. Okay. And then you -- you obviously recall

9 Harshberger (sic) telling you -- or Hershberger telling you

10 about an April 2000 fire heat plume where he manually

11 activated the system?

12 A. Correct.

13 Q. And that the system -- IST came out to recharge

14 the system, right?

15 A. Correct.

16 Q. All right. And then -- And we've been provided

17 with this today. This is dated May 9, 2005 for a CAT 826G,

18 Lannie Brant, recharge kit, inspect, test, and repair,

19 purchase order requisition. Were there -- were

20 there -- It's a purchase order from Camden County?

21 A. (Witness shakes head negatively.)

22 Q. What -- Okay. Never mind. I'm going to

23 withdraw that. That looks like what they're doing is

24 asking to get money to pay the April 26th invoice?

25 MR. MILLER: Exactly.

26

1 MR. ALLRED: Okay. All right.

2 THE WITNESS: Could I take a -- my turn for a
3 restroom break?

4 MR. ALLRED: Yes, absolutely.

5 (Whereupon, a brief recess was taken.)

6 BY MR. ALLRED: (Resuming)

7 Q. Do you have some sort of opinion about what
8 Camden County should have inspected for that would have
9 prevented this fire if they would have known they were to
10 have inspected?

11 A. Prevented the fire? Want to rephrase that or...

12 Q. Well, in other words, -- We can do it in little
13 piecemeal. I mean you've just testified that you thought
14 IST was negligent because they didn't adequately notify
15 Camden County that they had certain inspection procedures
16 that they needed to go through, true, or -- or is it just
17 that they needed to tell them about that the manual told
18 them -- would have told them those things?

19 A. That there was requirements and recommendations
20 for the inspection and maintenance of the suppression
21 system --

22 Q. Okay.

23 A. -- both contained in AFEX documents and in
24 related NFPA standards. That includes both owner's
25 inspections associated with daily and monthly visual

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1 inspections as well as regular tests and inspections by a
2 qualified service contractor such as Integrated.

3 Q. Are you aware that Integrated had offered Camden
4 County a contract servicing -- or a servicing contract?
5 In -- in other words, I -- IST saying I'm not just going to
6 come out with piecemeal when you call me, if you will give
7 me the servicing contract I'll come out there and service
8 the machine as it's supposed to be serviced. Are you aware
9 that IST or Integrated made that offer to Camden County?

10 A. I am not.

11 Q. Okay. And then you're also aware that Camden
12 County rejected that, right?

13 A. I'm not aware of an offer or a rejection.

14 Q. Okay. Do you have an understanding one way or
15 the other whether Camden County employees were not
16 inspecting their machine, the 826G and specifically the
17 fire suppression system on it as they were required to do
18 by the manual?

19 A. Mr. Martin's testimony was they were not
20 inspecting the fire suppression system per the
21 recommendations of the manual.

22 Q. Okay. Now if IST had given them more notice than
23 he did that they needed to get a manual or told them, you
24 know, that you need to get that manual because it tells you
25 about the importance of inspection issues and Camden County

26

1 went and got it and they performed those inspections,
2 do you have an opinion that that would have prevented
3 the fire?

4 A. I have no information that that would have
5 prevented the occurrence of the fire, no.

6 Q. And that will be because you don't know what
7 caused the fire?

8 A. That would be correct.

9 Q. Okay. All right. And then on number two it says
10 IST or Integrated I think you're calling them should have
11 provided substantive written information to Camden County
12 concerning the inspection and repair including a
13 maintenance report and recommendations such as the need for
14 owner inspections, regular maintenance, and related service
15 and inspection documentation. So that kind of runs hand in
16 hand with the NFPA 17 requirement we were just discussing?

17 A. It does.

18 Q. Okay. It -- it amounts to the same thing saying
19 that IST should have told them they needed to get the
20 manual because it would have given them the inspection
21 criteria they needed to follow?

22 A. Inspection and service, correct.

23 Q. Okay. All right. Are you critical
24 of -- I -- But prior to the fire -- or, you know, per
25 their actions prior to the fire of August 9, 2005, are you

26

1 critical of Integrated for anything else?

2 A. Prior to the fire...

3 Q. Let me rephrase it.

4 A. Thank you.

5 Q. Did -- did Integrated do anything prior to the
6 fire of August 9, 2005 besides these points you've
7 mentioned on page 8 of your report that you think
8 contributed to the fire?

9 A. Not that I'm offering opinion on, no, sir.

10 Q. Okay. Now would it be accurate to say that all
11 other opinions you have about AFEX and Integrated about
12 what they did pertain to their conduct after the fire and
13 their October inspection of the machine?

14 A. Yes, sir.

15 Q. Okay. And -- and in a nutshell is that that
16 they -- they went in without a protocol and they conducted
17 testing on the machine that disturbed it?

18 A. In a nutshell and -- and they should have
19 followed the -- at a minimum the -- if they were going to
20 disturb it and do an inspection the inspection criteria and
21 guidance provided in the AFEX manual for such work.

22 Q. How do you know they didn't?

23 A. I saw in the documentation that they did. I saw
24 no information that the information on the checklist was
25 filled out or any of the information was provided as part

26

1 of the investigation.

2 Q. Okay. What checklist are you talking about?

3 A. The fire investigation procedure contained in

4 Chapter 9 of the AFEX Technical Reference Manual.

5 Q. Okay. So it's your opinion, hey, look October 4

6 you guys went out and did that inspection, there should be

7 a checklist here of what you did?

8 A. The information contained in here should

9 have -- should have been acquired and -- and documented and

10 I see no information that it was.

11 Q. Okay. Does that -- Does the technical reference

12 manual say that for an inspection they should not open up

13 canisters to look inside or things of that nature?

14 A. No, it does not.

15 Q. Okay. Does it say that they should not unplug

16 the squib harness?

17 A. No, it did not.

18 Q. Just that they should document what they do?

19 A. It provides a fire investigation procedure --

20 Q. Okay.

21 A. -- which they should have followed.

22 Q. Is there a -- And -- and absent documentation

23 from them you don't know whether they followed it or not,

24 right?

25 A. Only to the extent that Mr. Smith and Mr. Latham

26

1 testified as to what they did do --

2 Q. Okay.

3 A. -- during their inspection of the machine in

4 October.

5 Q. So -- And -- and just from memory -- I mean

6 pull for me from your memory. I mean give me an example of

7 what Mr. Smith said that was done or not done during the

8 inspection of October that is not in compliance with the

9 checklist?

10 A. He didn't interview any operator or witnesses as

11 an example --

12 Q. Okay.

13 A. -- which is an important piece of information

14 when conducting an investigation as to what information can

15 be discerned from those eyewitnesses.

16 Q. And -- and does it -- does the manual say to do

17 that before you conduct the inspection?

18 A. As part of the investigation procedure.

19 Q. Okay. All right. And anything else that you can

20 think of?

21 A. I think the document speaks for itself in regard

22 to what activities should have been done during the October

23 inspection if a destructive -- destructive examination was

24 being taken.

25 Q. And tell me about that, what -- what in -- what

26

1 in your opinion about the October 4, 2005 inspection was
2 destructive?

3 A. The information testified to as -- by Mr. Martin
4 and as to the disturbing of and -- and breaking of hoses
5 and perhaps wires and Mr. Martin testified that the
6 canisters were -- were moved and disturbed.

7 Q. Okay. And do you remember actually Mr. Martin
8 testified that Mr. Smith uncapped the canisters and poured
9 the contents out on the ground? Do you remember that?

10 A. I believe he testified that he shook them.

11 Q. You don't remember he testified he spilled the
12 contents out on the ground?

13 A. I think -- I think there was some discussion
14 about that, yes.

15 Q. All right. But they were -- they were -- had a
16 lot of content in them when you saw them in March?

17 A. They did.

18 Q. Do you think somebody came back in between
19 October of 2005 and March 2006 and filled them back up
20 again?

21 A. No. The material was -- was caked when I saw it
22 in October and it may well have been caked at the time Mr.
23 Smith attempted to do that so it may not have dislodged or
24 fallen --

25 Q. Do you think --

26

1 A. -- out to a great degree.

2 Q. Okay. Do you -- do you -- do you believe

3 Mr. Smith did that at all? Do you believe he actually

4 shook the canisters upside down and emptied contents of it?

5 A. Mr. Smith denies that that occurred.

6 Q. Okay. And I guess you would have no opinion

7 about whether it happened or not?

8 A. I haven't formed --

9 MR. MILLER: Objection as to form. Go ahead.

10 BY MR. ALLRED: (Resuming)

11 Q. Do you?

12 A. No. I -- I haven't judged one over the other.

13 Q. Okay. Is it possible Mr. Smith shook the

14 canisters just to see how caked the contents were?

15 A. I suppose that's --

16 MR. MILLER: Objection as to form once again.

17 Go ahead.

18 BY THE WITNESS: (Resuming)

19 A. I suppose that's a possibility, sure.

20 Q. Okay. Would you be interested to know that

21 inspecting the system?

22 A. That would be one of the things that you would

23 look at, sure.

24 Q. Okay.

25 A. But I would add that it should be done in -- in a

26

1 controlled cooperative manner so it's -- the information is
2 understood and available to everybody.

3 Q. Okay. Is there a protocol in that regard for
4 fire inspections? Like is there an ANSI standard, a
5 national fire inspectors or fire protection engineering...

6 A. Well there's an NFP -- NFPA document on fire
7 investigation. I'm not a fire investigator but NFPA 921 is
8 a recognized standard for -- or practice I should say for
9 conducting fire investigations.

10 Q. Okay. And does it say you've got to wait until
11 the group gets there before you start touching things?

12 A. I would refer -- I would defer to Mr. Tijerina.
13 I haven't studied that document for the purpose of
14 this case.

15 Q. Okay.

16 A. I don't know.

17 Q. Well when you were there in November did you
18 lift -- did you lift up on the plunger?

19 A. No.

20 Q. Okay. Did you touch anything?

21 A. Yes.

22 Q. What?

23 A. I removed and looked at the condition of the
24 cartridge throats and I believe I looked at the canister
25 contents.

26

1 Q. In November?

2 A. No. I believe I did that later actually.

3 I -- I -- I don't recall.

4 Q. Okay. Could be one or the other; you just don't
5 remember?

6 A. I don't remember.

7 Q. Okay. And when you looked in -- at the canister
8 contents that you're talking about, is that when you saw
9 that they had a lot of content and that the content was
10 caked?

11 A. Yes.

12 Q. Okay. And did you notice that the seals at the
13 bottom had been partially blown?

14 A. I believe I observed that, yes.

15 Q. Okay. Do you believe that this system, the
16 fire suppression system, discharged in the
17 way -- discharged -- Strike that.

18 I don't know how to word this. Do you believe
19 that this fire suppression system discharged because of a
20 detonation of the squib at the one-ounce nitrogen bottle?

21 A. I -- I don't know. And it -- it's possible but
22 it's also possible it discharged because of a thermal
23 attack on the nitrogen canisters associated with the
24 extinguishers.

25 Q. And those would be the ten-ounce bottles, right?

26

1 A. That's correct.

2 Q. Okay. Just -- They got so hot that the gas
3 expanded beyond the pressurized capacity of their
4 containers?

5 A. And they released into the -- into the agent
6 canisters causing the agent to discharge through the
7 distribution system.

8 Q. Okay. But only partially?

9 A. Apparently based on the quantity of agent that
10 was remaining in the -- the containers after the loss.

11 Q. Okay. Now once the ten-ounce bottles, the seal
12 on those rupture and that gas goes down into the canisters
13 that hold the dry chemical, just based on that event and
14 aren't the -- isn't the powder in the canisters supposed to
15 completely discharge or nearly completely discharge?

16 A. If it was a complete intended release of the
17 nitrogen gas from the cartridges, yes.

18 Q. Okay. What would have caused it not to be
19 complete from the nitrogen bottle, the ten-ounce?

20 A. Well it -- it would be a rate. If -- if the rate
21 of discharge from the nitrogen cylinder was less than
22 needed to drive the agent through the openings in the
23 distribution -- distribution system you could get some
24 residual agent in the -- in the canister.

25 Q. Okay.

26

1 A. You could also get that to occur if the agent in
2 the canister was not -- was not properly or was already
3 caked prior to the operation of the system. There's a
4 number of reasons why that may have occurred.

5 Q. Okay. And in -- in terms of the partial or the
6 rate issue that you talked about the -- the nitrogen going
7 from the one-ounce bottle is supposed to go and drive a pin
8 into the ten-ounce bottles, right?

9 A. That's correct.

10 Q. Okay. And -- and I guess that's engineered so
11 that that pin creates a certain size hole, is that right,
12 so that the rate would be relatively fixed?

13 A. Yes.

14 Q. Okay. Well --

15 A. I -- I don't want to speak to the -- to the
16 engineering of the actual component but -- but the rate of
17 discharge of the nitrogen from the cartridge should be
18 sufficient to drive the contents of the extinguisher within
19 the prescribed discharge time and to overcome the friction
20 loss and head loss of the pre-engineered piping systems
21 connected to it.

22 Q. All right. And that's -- that's -- that's when
23 the pin breaks the seal as designed on the ten-ounce
24 bottles, right?

25 A. That's correct.

26

1 Q. And what happens when those seals burst because
2 of heat-related issues, fire gets hot enough to make
3 them burst?

4 A. It -- it could occur at a different rate.

5 Q. Okay. Because this -- because it's the seal down
6 at the other end breaking at whatever pressure -- whatever
7 rate the pressure within the canister causes, right?

8 A. That's correct.

9 Q. Okay. So that somebody standing on the outside
10 looking in as this fire is raging around the machine can
11 see a cloud of white powder go out that had nothing to do
12 with a true activation of the system?

13 A. Their perception would be -- would be an
14 activation of the system --

15 Q. Understood.

16 A. -- and -- and it may have a beneficial impact
17 depending on the state of the fire and the quantity of
18 agent discharged.

19 Q. But it's obvious that -- that -- well not
20 nearly -- not even close to all of the agent was
21 discharged, right?

22 A. Correct.

23 Q. Okay. So what they saw was more likely a result
24 of a heat caused release of the nitrogen from the ten-ounce
25 bottles, right?

26

1 A. That's a possibility. As I testified to it could
2 also be another reason why the agent didn't completely
3 discharge from the -- from the canisters. Certainly that's
4 one possibility but I don't think that it's necessarily
5 the -- the only possible cause for that to occur.

6 Q. Well, for instance, you don't think that -- Do
7 you think that the one-ounce bottle had already been
8 discharged prior to the fire based upon the facts you've
9 gathered?

10 A. I -- I don't have an opinion as to the specific
11 cause of the system failure as I indicated in my report.
12 There's not enough information to make that determination.

13 Q. And when you examined the firing mechanism that
14 you looked at I guess that didn't give you any information
15 to use that would help you in deriving a causation issue?

16 A. Nothing definitive, no, sir.

17 Q. Okay. Ideas? Nothing definitive but maybe some
18 ideas?

19 A. Well certainly one of the areas of -- of interest
20 based on Mr. Hershberger's interview and subsequent
21 testimony was whether there was some issue with the firing
22 mechanisms installed in the cab through its ability to
23 puncture the cartridge and I found no reason why it
24 wouldn't have. There -- there are some indications
25 of -- of bent pin problems with one-ounce canisters in
26

1 certain vintage AFEX systems but the -- the pin I observed
2 was straight and unbent and I found no reason to -- why it
3 wouldn't have functioned and punctured the cartridge as
4 intended.

5 Q. Okay. Now with a machine -- when he -- When
6 Hershberger depressed the plunger the first time, did he
7 tell you whether the motor was still running?

8 A. I believe he testified that it was not running.

9 And I believe he told -- Let me check my notes.

10 Q. Sure.

11 A. (Witness reviews document.) That was an area
12 obviously of interest. My notes indicate he shut the
13 machine down prior to pulling the pin and operating the
14 plunger.

15 Q. Okay. You had indicated, I think you did,
16 that -- that you -- Did you say you -- you wanted to look
17 at the control panel of where there were warning lights in
18 the cab?

19 A. No, I never testified to that. I testified that
20 I have from Mr. Martin a diagram from the Caterpillar
21 manual of the -- the warning lights associated with it.

22 Q. That's right. You got a page from the manual
23 about that, right?

24 A. Correct.

25 Q. And you got that in November or did you get
26

1 it later?

2 A. Correct.

3 Q. November '05?

4 A. Correct.

5 Q. Why did you get it?

6 A. I believe it was in conjunction with Mr. Tijerina

7 as to what alarms may have been going off that Mr.

8 Hershberger heard prior to him shutting down the machine.

9 Q. Did Mr. -- When you interviewed Mr. Hershberger

10 did he ever tell you that he saw a warning light go on but

11 he -- that he was unfamiliar with?

12 A. No, he did not tell me that.

13 Q. Did you read in Mr. -- Have you read

14 Mr. Tijerina's report?

15 A. Briefly this morning.

16 Q. Okay. And is it your understanding that

17 Mr. Tijerina also interviewed Mr. Hershberger?

18 A. I believe that's true.

19 Q. Okay. And did you see where Mr. Hershberger told

20 Mr. Tijerina that -- that an unfamiliar warning light had

21 gone off in the cab?

22 A. I don't remember that in Mr. Tijerina's report.

23 It may be there. I just read it quickly this morning.

24 Q. Do you -- Did -- did Mr. Hershberger tell you

25 when and why he first radioed back to the shop about any

26

1 problems he was having with the machine?

2 A. Yes.

3 Q. What did he tell you?

4 A. According to my notes he said when he got in the
5 cab there was a periodic and intermittent warning light and
6 buzzer sounding that was related to the hydraulic system.
7 He identified light, location, and symbol.

8 Q. Okay. So through what he told you was
9 there -- there was a warning light but it wasn't
10 unfamiliar, it was a familiar -- he knew what it was?

11 A. I just related to you what he told me in
12 my notes.

13 Q. Is that what you take from what was in your
14 notes, that a warning light was on and a buzzer was
15 sounding and he knew what they meant?

16 A. Let me check my handwritten notes --

17 Q. Okay.

18 A. -- to be sure.

19 Q. You were the one who talked to him. I'm
20 trying --

21 A. I understand.

22 Q. -- to get your impression when you were there.

23 A. (Witness reviews document.) I guess it's in
24 here. Have the question again, please?

25 Q. Sure. Let me paraphrase. Did Mr. Hershberger

26

1 tell you that as he was getting back into the cab he saw a
2 warning light and heard a buzzer?

3 A. Yes.

4 Q. All right. And did he tell you he knew what
5 those were, that they had to do with the hydraulic system?

6 A. Yes. He identified the location of the light on
7 the control panel using -- in words and I related that back
8 to the diagram provided to me earlier by Mr. Martin.

9 Q. And which -- And to a specific light or warning
10 light on the diagram? Were you able to narrow it down to
11 one button or one light?

12 A. My notes indicate which light it was.

13 Q. All right. Which one was that?

14 A. He indicated that the light was the second row,
15 second from the left he indicated was associated with the
16 hydraulic system.

17 Q. And that's the -- the bottom row, right?

18 A. Correct.

19 Q. And -- Okay. And -- and is that what the manual
20 says it is is for the hydraulic system?

21 A. I'm doing this just now because it wasn't the
22 focus of what I was doing.

23 Q. Are you missing a page?

24 A. No, sir.

25 Q. Okay.

26

1 A. You know at least one other control panel was on
2 the diagram Mr. Martin provided to me, the second row,
3 second light is a hydraulic light. Another one is
4 associated with transmission oil --

5 Q. Okay.

6 A. -- but at least on one of the panel diagrams on
7 sheet 23 of the manual provided by Mr. Martin it is
8 hydraulic light.

9 Q. Are -- are any of the others on either the top
10 row or the bottom row besides that one related to
11 hydraulic?

12 A. On some of the diagrams in this sheet it's the
13 first light on the bottom row.

14 Q. That pertains to hydraulic?

15 A. Correct.

16 Q. And on some of the diagrams in this sheet then
17 what is the second light on the bottom row if it's not
18 hydraulic?

19 A. It is hydraulic.

20 Q. Oh I thought you said it was the first one on
21 some diagrams?

22 A. It is. We obviously are confused.

23 Q. Yes. I -- Okay. Who told you that the warning
24 light that went -- or was on was the one on the second row,
25 the bottom row, two over from the left? Was that Martin or
26

1 Hershberger?

2 A. Mr. Hershberger --

3 Q. Okay.

4 A. -- during my interview on March 3rd, 2006.

5 Q. Okay. And then you -- you got -- you got

6 together with Mr. Martin and you got a diagram of the

7 system, right?

8 A. Correct. And I don't recall if it was before or

9 after. I -- I wanted -- I think I testified earlier I

10 believe I got that in November.

11 Q. Okay. And -- and -- I'm sorry. Dates are not

12 important to me. You -- you have a -- a sheet with a

13 diagram that explains what each of the lights is, right?

14 A. Correct.

15 Q. On the 826D -- or G?

16 A. Well it was indicated to me that was the case. I

17 asked for this document and it was provided to me by Mr.

18 Martin.

19 Q. And -- and -- and I guess what I'm confused about

20 is I heard you to say that when you looked --

21 A. It might be simpler if you looked at it.

22 Q. Yeah. Well I have. When you looked at this one

23 second over from the bottom that that's hydraulic?

24 A. Not the one you're pointing to, sir, no.

25 Q. This is hydraulic?

26

1 A. Yes, sir.

2 Q. All right. But he's got a drawing over there
3 showing the light that was on was the second one?

4 A. Correct.

5 Q. And that's why I was asking you --

6 A. On this one it is hydraulic.

7 Q. Ah okay. And do you know what the difference is
8 between the two?

9 A. No. And I don't know which panel was the
10 exact --

11 Q. I gotcha.

12 A. -- one that was located in the -- in the
13 document.

14 Q. Okay. And -- and what is -- what is the -- the
15 second one on the other one if it's not hydraulic?

16 A. Transmission oil filter restriction.

17 Q. Did you say that when we first started?

18 A. I did.

19 Q. And I'm sorry. I didn't hear that part. That
20 explains the confusion. Thank you.

21 Okay. And did you get any pictures while you
22 were out at your inspections at any time of this control
23 panel on the 826G in question?

24 A. I don't recall. I would have to go through them
25 all to see.

26

1 Q. Okay. And --

2 A. I don't recall.

3 Q. And it's still down there, right?

4 A. I have no idea.

5 Q. Okay. Mr. Hershberger did not tell you when you
6 talked to him that he was unfamiliar with what the light
7 meant, did he?

8 A. I just related to you what Mr. Hershberger told
9 me during my interview. He identified the light and
10 the -- what he understood the purpose of the light to be.

11 Q. A hydraulic line?

12 A. Hydraulic.

13 Q. And that would be some sort of failure on the
14 hydraulic system?

15 A. Again, I'm -- I'm not an expert on --

16 Q. No, no. What --

17 A. -- the purposes of these warning lights and what
18 they indicate on a particular machine.

19 Q. I'm not asking you that. I'm asking --

20 A. If the warning light -- I'm not finished --

21 Q. I'm asking you what Mr. Hershberger conveyed to
22 you. Did Mr. Hershberger convey to you he understood that
23 light to mean there was a problem with the hydraulic system
24 on the vehicle?

25 A. That it was associated with the hydraulic system,

26

1 yes, sir.

2 Q. Okay. All right. And then within a relatively
3 short period of time he parked the vehicle, shut down the
4 engine. But, now, he saw black smoke before he shut down
5 the engine?

6 A. No, sir.

7 Q. Okay. What -- what was the sequence?

8 A. The sequence indicated in my notes is that when
9 he got in the cab there was a periodic intermittent warning
10 light and buzzer sounding that was related to the hydraulic
11 system. He radioed Chris Martin who asked him what were
12 the gauges reading and he provided that information to
13 Mr. Martin and that they seemed okay. Chris told him he
14 would come and check the machine. I'm just reading my
15 notes at this point.

16 Q. That's fine.

17 A. The machine was stopped and parked but still
18 running. He was in the machine thereafter for about five
19 minutes idling with no work to do. Do you want me to
20 continue?

21 Q. Is your impression that during that time period
22 he's waiting on Martin to get there?

23 A. I -- I believe he was waiting to do work and for
24 Mr. Martin to come I suppose.

25 Q. Okay. And then go ahead.

26

1 A. I -- I don't have an independent recollection of
2 what I thought he was waiting to do at the moment.

3 Q. Okay. Or a note?

4 A. Pardon?

5 Q. Or a note?

6 A. Or a note.

7 Q. Okay. Go ahead.

8 A. A city of St. Mary's truck pulled up where he was
9 sitting - he indicated Steve was the name of that
10 driver - and proceeded to dump approximately 20 to 30 feet
11 away from his blade.

12 Q. Go ahead.

13 A. He was pre-positioned for the dump. And as he
14 moved towards the truck he heard a pop and felt a shudder.
15 He noted that his gauge -- gauges still looked okay.

16 Q. All right. Now right there, did you stop to ask
17 him whether this intermittent hydraulic thing was still
18 going on? Hydraulic alarm?

19 A. Not as indicated in my lights -- in my notes.

20 This is just what he -- he shared.

21 Q. Okay. So you --

22 A. But he did indicate that the -- When he moved
23 towards the truck he indicate -- he noted that his gauges
24 still looked okay.

25 Q. Okay. All right. Did -- did Mr. Hershberger

26

1 ever tell you that in fact he never radioed Chris until
2 after he had tried to depress the plunger but the plunger
3 didn't work? That's not what he told you, right?

4 A. I believe he subsequently called Chris later.

5 Q. Right.

6 A. I don't remember any -- his deposition as to
7 whether he was -- he was inquired -- whether he was asked
8 as to an earlier radio traffic with Chris or not. I
9 don't recall.

10 Q. Okay. All right. Are there any other --

11 A. I -- I believe you were asking me questions as to
12 whether or not he saw the smoke or flame prior to him
13 pushing the plunger was the question I was answering as I
14 read this.

15 Q. Yes. We didn't get there yet, did we?

16 A. No.

17 Q. Okay. Go ahead.

18 A. As he was pre-positioning for the dump that's
19 when he looked over his right shoulder and saw what he
20 described as a heat plume similar to what he had seen back
21 in April. He indicated it was the same location but
22 somewhat larger but he saw no smoke or flame.

23 Q. Okay.

24 A. So that -- that answers the question as to
25 whether he saw smoke or flame prior to when he depressed

26

1 the plunger. He had not depressed the plunger when he
2 noticed the heat plume.

3 Q. All right. And then as you keep going he turns
4 off the motor before he depresses the plunger?

5 A. He indicated he backed the machine up slightly to
6 get away from the St. Mary's truck. He looked over his
7 shoulder to confirm the heat plume. This time he saw some
8 smoke. He then shut the machine down, pulled the pin and
9 punched the plunger.

10 Q. All right. In terms of the October 4, 2005
11 inspection not being in compliance with the AFEX technical
12 manual, what was done -- what did they do that would have
13 prevented any other expert coming in from determining, if
14 that were possible, why the fire suppression system didn't
15 work?

16 A. They materially changed the condition of the
17 system as they found it without adequately documenting the
18 circumstances and -- and the conditions that they found in
19 my judgment.

20 Q. Okay. And -- and I understand that's --

21 A. I -- I -- Because I don't know the
22 specific -- can't determine specifically what it was that
23 caused it not to function, I can't therefore say what it is
24 they did or failed to do that prevented it from doing so.

25 Q. And I guess that's what I'm trying to get my
26

1 hands on. I mean so once you realize that guys unscrew a
2 bottle, pull the plug out, and then a -- a pin gets bent,
3 does everybody just throw up their hands and say, well,
4 then there's no use in even going further with this because
5 we can't figure out what caused this thing to not
6 discharge; is that accurate?

7 A. No, that's not accurate.

8 Q. Okay. Well so that's what I'm asking for. I
9 mean what -- what prevented people from, all right, well,
10 that happened, now let's look at what's going on? What is
11 there?

12 A. Not knowing in totally what was done it's hard to
13 answer that question.

14 Q. Okay. For example, the pins, one was bent and
15 you have a picture of it, right?

16 A. Correct.

17 Q. Mr. Tijerina told you that that connector, that
18 harness, had been firmly plugged into its port, right, in
19 September?

20 A. I believe -- Yes, I believe he has photographs
21 about that --

22 Q. Okay.

23 A. -- showing that.

24 Q. That connection could not have been firmly and
25 completely made with the pin bent, right?

26

1 A. I believe that's true.

2 Q. Okay. Which means that as -- as of September 8,
3 2005, the pin wasn't bent and the pin therefore had nothing
4 to do with why the fire suppression system didn't work,
5 right?

6 A. It's likely the pin was not bent when
7 Mr. Tijerina saw it plugged into the squib -- squib harness
8 plugged in in September, correct.

9 Q. Okay. And so if it was completely plugged in
10 then the -- the fact that it was bent later doesn't have
11 anything to do with what -- what caused the fire
12 suppression system not to discharge, right?

13 A. That's likely true.

14 Q. Okay. Now I guess are you assuming to be true
15 that, for example, these -- these hoses, like the hose
16 around this canister here (indicating) and -- well your
17 versions -- You have three color photos of what's
18 essentially the same area that's depicted in Defendants' 1
19 and 2 of Tijerina deposition. You're -- Are you assuming
20 that Chris Martin's testimony is the truth that that line
21 was cut with a knife just because Mr. Martin says he saw
22 that happen?

23 MR. MILLER: Object to the form of the question
24 but go ahead.

25 \

26

1 BY THE WITNESS: (Resuming)

2 A. No, I'm not.

3 Q. Okay.

4 A. And I told you I didn't have any analysis as to
5 how that -- or what tool may have been used to -- to -- to
6 cause that break in that line.

7 Q. What if we learned that in fact that the hose
8 depicted in -- in your three photos and Defendants' 1 and 2
9 was not fractured on September 8th as depicted in
10 Mr. Tijerina's photos, that it -- it was intact, how does
11 that make it impossible you -- for you to figure out what
12 caused the fire suppression system not to discharge?

13 A. I didn't say it wasn't possible. It says -- I
14 indicated it hampered it.

15 Q. Okay.

16 A. I don't believe it would make it impossible.

17 Q. All right. Well let's say we know that now. I
18 mean here's a picture showing it's intact and now we have
19 it broken later. Okay. So we know that. So at
20 the -- You know, September 8th, the hose is intact.
21 How -- how are you hampered now with -- with knowing that?
22 How are you hampered in determining whether that hose had
23 anything to do with the cause of the fire suppression
24 system failing?

25 A. Based on the information I had now or have, I

26

1 don't think I can say to a reasonable degree of certainty
2 whether that that hose had anything to do with the failure
3 of the system, its condition.

4 Q. All right. Can't say one way or the other?

5 A. I can't say.

6 Q. Okay. All right. And -- and are you saying that
7 had you -- had the hose looked like this as depicted in
8 Defendants' Exhibit Number 1 on November 11 when you went
9 and looked at the machine that you would have been in any
10 other position to say otherwise?

11 A. No, I can't say that.

12 Q. Okay. This hose that's depicted in -- that's the
13 copy date -- this is a picture and it says -- Let me see
14 if these all have that on there though.

15 A. Yeah. The bracket number.

16 Q. Okay. Yeah. Number 35, is that what -- is that
17 what that says to you, 35?

18 A. Correct.

19 Q. Okay. And that's -- that's in real faint print
20 on the back of the photograph. These were reprinted on
21 March 20th, 2008. There's a -- there's a picture of the
22 fractured hose, okay. Now you go through your -- Why did
23 you take that picture?

24 A. Because it was a fractured hose that he observed
25 during -- during that inspection.

26

1 Q. Okay.

2 A. And -- and, again, I don't know when that

3 fracture would have occurred. I don't know if it occurred

4 in October, if it occurred -- if it was broken at the top

5 of the hill or if it was broken during being transported

6 from the top of the hill down.

7 Q. Okay.

8 A. But the opportunity to -- to obtain that

9 information existed on October 4th when the machine was

10 inspected at the top of the hill.

11 Q. Is it your belief that the machine on October 4,

12 2005 had not been moved yet from where it was at the time

13 of the fire?

14 A. No. I believe it had been -- had been moved I

15 believe if I recall a couple hundred feet in order to

16 accommodate ongoing activities at the -- at the landfill.

17 Q. So it was dragged back by the D7 is what they

18 testified to, the dozer, the bulldozer, right?

19 A. I believe that's true.

20 Q. And -- and that would be giving that machine some

21 jolting, wouldn't it?

22 A. I suspect it would, sure.

23 Q. And so if you have some brittle lines that hose

24 could have fractured in that movement, right?

25 A. As I just testified to I don't know when that

26

1 would have occurred.

2 Q. Okay. And you have nothing to indicate that Mr.

3 Smith or Mr. Latham did that to that hose on October 4,

4 2005?

5 A. That particular hose in photograph --

6 Q. 35.

7 A. -- 35, that's correct.

8 Q. Okay. Okay. And the -- the picture of the

9 bracket bolt that was loose in your two pictures, do you

10 have any -- anything -- any reason to believe that

11 Mr. Latham or Mr. Smith did that, that is, that they

12 encountered the tanks with that bracket in a tight position

13 and left them in a loose position?

14 A. No specific testimony is -- is that only -- No

15 specific testimony as to that, no.

16 Q. I mean Mr. Martin didn't even reference this

17 bracket in his deposition, did he?

18 A. That's correct.

19 Q. Okay.

20 A. Mr. Martin wasn't -- testified he wasn't with

21 them at all times during all of their inspections.

22 Q. All right.

23 A. It was an observation that I photographed based

24 on my -- my looking at the machine and the system.

25 Q. And that's all it is at this point. It's just

26

1 you saw a bracket that was not loose -- or -- or not tight

2 and you photographed it, right?

3 A. That's correct.

4 Q. You have no idea when that became loose?

5 A. That's correct.

6 Q. Okay.

7 A. But I wouldn't have expected it to be loose which

8 is why I took a photograph of it.

9 Q. Okay. And then you've got these pictures of the

10 harness being not connected. Of course, now Mr. Smith you

11 understand testified that that might have been his error

12 and that he might not have put the harness back on, right?

13 A. I don't recall that testimony. I recall he said

14 that he did put it back on, reconnected everything and had

15 put on and taken them off for thousands of times. Maybe

16 I'm mistaken though.

17 Q. All right. And then there's -- there's pictures

18 of what you said you believe to be the wiring coming from

19 the harness on the squib and the hose that goes to the

20 actuators coming from what might be the cab, right?

21 A. Correct.

22 Q. Do you have any evidence to indicate that

23 that -- those fractures were done by Mr. Smith or

24 Mr. Latham?

25 A. No. That location was not cited by -- by

26

1 Mr. Martin in his -- in his testimony as to where he

2 observed the hose being cut as he described it.

3 Q. Okay. So the only pictures you have in that

4 regard are -- are the ones of the top of the canister

5 because they're just in the area of the canister and that's

6 what Mr. Martin testified to?

7 A. That's correct.

8 Q. And you don't --

9 A. That -- that was a source of these -- these

10 photographs that you asked me to pull them out.

11 Q. And as you -- And as you've said, you -- you

12 don't know whether Mr. Smith or Mr. Latham did that or not?

13 A. It -- it's -- it's consistent with Mr. Martin's

14 observations. And -- and -- But, yes, that's -- that's

15 true.

16 Q. When you -- you said you opened the canisters

17 when you -- You didn't remember whether it was November

18 or -- or March. Did you cut any hoses to do that?

19 A. I don't believe so.

20 Q. Okay. Would you have had to? Would you have had

21 to cut hoses to open a canister?

22 A. No, sir.

23 Q. Okay. I mean they screw off, right?

24 A. Correct. The tops screw off.

25 Q. Okay. Did you -- Would you need any tools to

26

1 unscrew them?

2 A. You may need some help.

3 Q. And the -- But essentially they're designed to

4 unscrew like the lid on a mayonnaise jar, right?

5 A. They're probably a little tighter than

6 the -- than a lid on a mayonnaise jar but -- but they're a

7 screwed lid into a pressurized container.

8 Q. Is this the lid we're talking about with

9 the -- with the line that runs through it with the

10 indentation on the top?

11 A. On Exhibit 1, yes.

12 Q. Okay. Defendants' Exhibit 1. All right.

13 And -- and that groove is there to stick a tool in to maybe

14 help pry it open if you need to?

15 A. A little helper -- Yeah. Put a little helper on

16 there to get some torque on that cap.

17 Q. Okay. Did you use a tool to open the canisters?

18 A. I don't recall.

19 Q. Okay. Did you bring your toolbox?

20 A. I believe Mr. Tijerina brought his truck and it

21 had tools in it.

22 Q. Okay. Did you read what Mr. Martin said that

23 Mr. Latham and Mr. Smith came in October and they didn't

24 have tools with them and that's why they cut hoses?

25 A. I believe I recall some discussion about tools in

26

1 his deposition, yes.

2 Q. Do you believe that?

3 A. I didn't judge belief or unbelief in that

4 comment. I just noted it.

5 Q. Okay. Did you take tools with you in November?

6 A. No. I flew in and it's more and more difficult

7 to take tools on -- on aircraft.

8 Q. Okay.

9 A. I believe Mr. Smith flew as well.

10 Q. And in March did you fly in then?

11 A. I did.

12 Q. Okay. But you knew Mr. Tijerina was coming

13 by car?

14 A. Correct.

15 Q. Okay. Had you prearranged that he would bring

16 tools?

17 A. I believe we had discussed that. I -- I don't

18 recall specifically.

19 Q. Did he bring tools in November?

20 A. I believe he had some tools in his vehicle

21 and -- and certainly there's Mr. Martin would have had

22 tools available on site at -- at the -- at the landfill but

23 I don't recall specifically.

24 Q. Okay. Are you aware of any other compromises in

25 the hoses, pressurized hoses, besides those that are

26

1 depicted in all the photographs on the table?

2 A. No.

3 Q. Are you -- are you aware of any fractures or cuts
4 or compromise of any wires to the fire suppression system
5 other than what's on the table?

6 A. Not specifically, no. Other than those -- those
7 that were testified in -- in certain depositions.

8 Q. And let me rephrase that because there's a
9 boatload of stuff on this table. I'm talk -- I'm talking
10 about what's depicted in the ten photos that you brought
11 and the two photos that Mr. Tijerina brought. Are you
12 aware of any wires that were compromised, cut, or nicked
13 that you saw that are not depicted in any of those twelve
14 photographs?

15 A. (Witness reviews photographs). I remember
16 photographing the connection of the system to the battery
17 and I -- I'm just looking to see if that shows a -- a cut
18 at that location.

19 Q. Would you have looked there because of Mr.
20 Martin's testimony? Obviously not because you didn't have
21 that at the time, right?

22 A. Correct.

23 Q. Okay.

24 A. Obviously not. The answer to your question
25 is no.

26

1 Q. Okay. You have a picture of wires going into the
2 battery there, don't you?

3 A. I do.

4 Q. None of them are cut, are they?

5 A. Well I -- I -- The purpose of the photograph
6 wasn't to discern whether any wires were cut or not. It
7 was just to look at the -- to document the location of the
8 connection.

9 Q. I understand. And I'm not --

10 A. And I can't discern whether they -- they're cut
11 or not in this photograph.

12 Q. Okay. Well but you were there, right, looking at
13 what you just -- I mean that's just a photograph. You
14 were actually there looking at it, right, for longer than a
15 split second the frames of that camera went open or the
16 shutters went open, right?

17 A. Certainly.

18 Q. Okay. Did you see any broken wires --

19 A. I made no note of a broken wire.

20 Q. But what -- Isn't it likely you would have?

21 A. If I observed it.

22 Q. Yes?

23 A. Yes, if I observed it.

24 Q. Okay. In fact, if you had noted breaks in hoses
25 or wires that you thought were pertinent to the operation

26

1 of the fire suppression system, you would have taken
2 pictures of them, right?

3 A. Well, again, with regard to the wires the
4 important aspect of the investigation even then was why the
5 system did not operate manually when operated by
6 Mr. Hershberger --

7 Q. Right.

8 A. -- because presumably based on information that
9 was available it -- he would have -- he attempted to
10 discharge the system prior to any automatic -- prior to
11 the -- likely prior to the automatic discharge of the
12 system from a fire.

13 Q. Okay. Was there any consideration back as early
14 as the November '05 March '06 time frame that the system
15 could have discharged electrically but owing to a
16 compromise in the hose none of the powder would have been
17 dispersed?

18 A. Repeat that again, please?

19 Q. Sure. Was there any thought or consideration in
20 the November '05 to March '06 time frame that electrically
21 the system could have discharged, that is, a sensor went
22 off and the one-ounce nitrogen bottle fired but none of the
23 powder was dispersed because of a compromise of the hose
24 going from the one-ounce bottle to the ten-ounce bottles?

25 A. In November, no, because the belief and
26

1 information available was the system may have automatically
2 activated subsequent to Mr. Hershberger attempting to
3 discharge it manually.

4 Q. Okay. In March when you were there inspecting
5 the machine, was there any understanding what was going to
6 happen to the machine after your inspection?

7 A. Not any personal knowledge. I assumed it would
8 be -- I made an assumption as to what would be -- No, I
9 didn't have any personal knowledge as to what would be
10 happening with the machine after March.

11 Q. Are they typically sold to salvage?

12 A. I would expect that could be possible. I don't
13 know.

14 Q. You had your camera there though with you in
15 March, right?

16 A. I suspect that I did.

17 Q. Okay. You said something about the airlines. I
18 mean you -- you can check tools, can't you?

19 A. Sure.

20 Q. You're not going to drag it through security,
21 right?

22 A. That's correct.

23 Q. Okay. Is there any reason why, for
24 example -- one thing I don't see in anybody's photographs
25 really is -- Show me a picture of the hose from the
26

1 one-ounce nitrogen bottle going all the way to the
2 ten-ounce bottle. I want to see every inch of the length
3 from A to B. And what I see is I see a picture up here and
4 maybe there's an inadvertent one here because somebody was
5 aiming the camera at this point over here. But it doesn't
6 appear that anybody attempted to take a sequence of
7 pictures showing the whole length of the hose. Do you
8 agree with that?

9 A. No.

10 Q. Okay. You think there is an attempt to document
11 the whole length of the hose?

12 A. Yes.

13 Q. Where is that?

14 A. (Witness reviews photographs.)

15 Q. And pardon me because I haven't even seen all of
16 your pictures yet so...

17 A. Perhaps there is I should say. I believe these
18 photographs show a large portion. It's not that complete
19 run of tubing --

20 Q. Okay.

21 A. -- or hose I should say.

22 Q. Well as you took those pictures was it your
23 intent to record or memorialize the whole run?

24 A. My intent -- It may well have been. I -- I
25 wouldn't be surprised if I was intending to photograph
26

1 that -- that run of tubing.

2 Q. Okay. Physically since everybody was allowed to
3 do perhaps if not destructive testing you were allowed to
4 open and touch things on March the 3rd, 2006 as I
5 understand your testimony, right?

6 A. I believe so.

7 Q. Okay. And these -- were you sure whether these
8 were -- was that -- Were those pictures in front of you
9 taken in November?

10 A. I believe so.

11 Q. Okay. So those are November. In March did you
12 actually eyeball and follow with your fingers all the way
13 down or try to look at every angle of the hose from
14 squib -- at squib connection to ten-ounce canisters -- or
15 ten-ounce bottles of nitrogen?

16 A. I documented photographs based on the -- you
17 know, what you see here. I don't remember specifically
18 touching and feeling every inch of that hose from the squib
19 connector with the operator to the -- to the ten-ounce
20 canisters.

21 Q. Are you confident that every compromise in that
22 hose is -- is recorded in your photographs?

23 A. No.

24 Q. Okay.

25 A. Because it's been subjected to fire and there may

26

1 be compromises you can't visually see in photographs.

2 There can be breaks and opens and -- and other opens
3 post-fire that have occurred because of the embrittlement
4 of the hose.

5 Q. But if you had seen any -- Aside from what the
6 photographs now show, if you had seen any in your visual
7 inspection of the line you would have attempted to isolate
8 any fracture or -- or severed portion of the hose?

9 A. If I thought it was important, sure.

10 Q. Okay. Would there have been those in that
11 particular hose that would not have been important?

12 A. That's an important hose.

13 Q. Okay.

14 A. It provides the control pressure to the nitrogen
15 canisters associated with the extinguishing containers.

16 Q. All right. Have you been asked to undertake any
17 other work than you've told me about -- well than you've
18 done already?

19 A. No, sir.

20 Q. All right. No more issues to look into?

21 A. That's correct.

22 Q. Okay. In terms of where you encountered the hose
23 you've got some pictures of where it comes out of the cab,
24 where they run. Was all of that in keeping with what the
25 installation manual issued by AFEX required?

26

1 A. I didn't do a discrete analysis of whether the
2 routing and material and the lengths of the hose -- of any
3 hoses were consistent with the AFEX manual.

4 Q. Are there pinch points on the machines?

5 A. Sure.

6 Q. Okay. And they can cause mechanical fractures of
7 hoses and wires if people put the hoses and wires in bad
8 places?

9 A. I would expect that's the case.

10 Q. Okay. Based upon Mr. Hershberger's testimony
11 that when he -- when he depressed the plunger it bottomed
12 out, it didn't feel like the last time, there was no
13 resistance, does that indicate to you one way or the other
14 whether that one-ounce nitrogen bottle had already -- the
15 gas within it had already been released before he ever went
16 to depress the plunger?

17 A. That's one possibility.

18 Q. Okay. What's another?

19 A. That there was no gas in the container to
20 begin with.

21 Q. Okay. Any others?

22 A. In November of '05 a possibility would have been
23 that the -- there was a problem with the actuator itself.

24 Q. And then how --

25 A. But my subsequent inspection of the actuator did

26

1 not discover any problem with it.

2 Q. Okay. If every fracture or severed wire hose
3 that's in any of these pictures we've been talking about
4 didn't exist on the day of the fire, every hose, every wire
5 was intact, what caused the fire suppression system not to
6 function under that hypothetical?

7 A. I don't know.

8 Q. Okay. What would you need to know? I mean what
9 else would you need to know that you've been deprived of
10 having to be able to formulate what caused the fire
11 suppression system not to work if all of those hoses and
12 wires were intact?

13 A. The conditions of the fire protection system just
14 prior to it being called on to actuate, such as the
15 condition of agent within the -- within the canister, the
16 weight and proper installation of components including
17 actuation and discharge cartridges I call them, the
18 integrity of the agent containers. By containment, I'm
19 talking about its protection from moisture including seals
20 would be examples of the -- of the -- of the things you
21 would be looking for.

22 Q. And that -- if -- if I -- You correct me if I'm
23 wrong but what I heard you say was those are things you
24 would have liked to have known what they were like before
25 the fire?

26

1 A. Correct.

2 Q. All right. How would -- How was your ability to
3 inspect the machine after the fire, how did that prevent
4 you from determining or answering any of those questions?

5 A. The changes to the equipment caused by the fire
6 and by subsequent disturbing of the equipment.

7 Q. And when we look at subsequent disturbing of the
8 equipment, what in particular?

9 A. Well we've gone through the inspection on October
10 4th and it -- it -- that work not being done consistent
11 with AFEX recommendations for documenting the scene.

12 Q. I mean I realize that something can be done
13 without being done in accordance with rules and
14 regulations. But what I'm really more interested in is
15 what they actually did that prevented you from determining
16 the integrity of the system. So, for example, if some guy
17 unscrews the lid and looks in and sees caked up powder and
18 puts the lid back on, how does that prevent you from doing
19 the same thing?

20 A. That example doesn't --

21 Q. Okay.

22 A. -- because I don't know -- I'm not able to
23 determine what specific cause for the system failure
24 to -- the system's failure to discharge was. I can't
25 answer that question with any specificity.

26

1 Q. Okay. Now we've already been through the pins
2 not being a likely cause of anything. The hose: You've
3 already indicated you really couldn't say one way or the
4 other whether if that hose on the canister was intact, that
5 would have had anything to do with the fire suppression
6 system working or not, right?

7 A. I don't think I was asked that question.

8 Q. Well, in other words, --

9 A. If that -- if that hose --

10 Q. If after the fire you learned that this hose as
11 depicted in 1 was just like -- it was intact as opposed to
12 how it's depicted as fractured in your pictures that
13 doesn't really tell you how the fire suppression system
14 failed?

15 A. That's correct.

16 Q. Okay.

17 A. I misunderstood the question.

18 Q. So I mean, again, I -- I appreciate that you
19 contend these guys went in there and didn't do things
20 according to Hoyle. They didn't follow AFEX's own
21 technical manual. But what specifically did they do that
22 prevented you from determining what caused the fire
23 suppression system not to work?

24 A. I cannot cite a specific instance of what they
25 did because I don't know everything that they did do so I

26

1 can't -- -- I -- I don't know. I cannot cite a specific
2 activity that -- that prevented me from determining that.
3 And I didn't -- I didn't offer that opinion.

4 Q. I mean one of the -- one of the allegations
5 obviously in this case since nobody has an opinion of what
6 happened is -- is -- is that you're prevented from offering
7 opinions as to what happened because somebody messed with
8 the system. Well that either carries weight or it doesn't
9 based on, well, what about what they did prevented you from
10 doing your job. And what you're telling me today is you
11 don't know?

12 A. That's correct.

13 Q. Okay. And we've gone through certain particulars
14 about, for example, the lid on the fire canister, the hose
15 coming out of the canister, the harness connection that
16 would not have had anything to do with your ability to tell
17 what caused the failure of the fire suppression system,
18 right?

19 A. That's correct.

20 Q. Okay. If I told you that, for instance, in this
21 picture of this canister where that hose is severed that it
22 was done accidentally on October 4, 2005 so that you now
23 know that that hose was as it was depicted on September
24 8th, it was intact. Again, that would -- that would not
25 help you in determining what caused the fire suppression

26

1 system to fail, right?

2 A. That's correct.

3 Q. And if you learned that -- Where are those
4 pictures of these and the -- and the ones where the wire
5 and the hose come out of the cab. If you had learned that
6 at the time of the fire that hose coming out of the cab was
7 not severed but it was -- it was intact, would that help
8 you determine what caused the fire suppression system
9 to -- to fail?

10 A. That would be useful information if that hose was
11 completely intact and functioning from the one-ounce
12 canister to the ten-ounce. That would be useful
13 information.

14 Q. Tell me -- tell me why?

15 A. Because the pressure boundary providing gas from
16 the actuator to the -- to the containers would be intact.

17 Q. Assuming it wasn't compromised at some other
18 portion along its length, right?

19 A. Correct.

20 Q. Okay.

21 A. That was the premise of your question.

22 Q. All right. Let me see; any of these other
23 things -- This hose that's down in the engine where we're
24 not sure if that's the head cover above it or not near a
25 shaft, if you were to learn that pipe -- or that hose was

26

1 intact at the time of the fire, would that help you at all
2 in determining why the fire suppression system failed?

3 A. No.

4 Q. And just to sum it up and you said it and I
5 apologize but you don't know what Mr. Smith did or didn't
6 do or Mr. Latham did or didn't do on October 4, 2005
7 specifically that prevents you from determining why the
8 fire suppression system didn't work?

9 A. That's correct.

10 Q. Okay.

11 MR. ALLRED: Thank you.

12 THE WITNESS: You're welcome.

13 MR. ALLRED: She probably has some questions.

14 MS. AKINS: I don't have very many.

15 CROSS-EXAMINATION

16 BY MS. AKINS:

17 Q. Mr. Arnold, did you ever talk to Mr. Murray, the
18 fellow that owned Integrated?

19 A. No, ma'am.

20 Q. Okay. What about to his stepson, Austin

21 Latham, --

22 A. No, ma'am.

23 Q. -- did you talk to him?

24 A. No, ma'am.

25 Q. Mr. Allred asked you some questions about the

26

1 items in your report where you criticized Integrated
2 System. And one of the things that you said is that it's
3 your understanding based on what you've reviewed that
4 Integrated did not properly instruct, I guess, the Camden
5 County employees about the inspection procedures; is that
6 accurate?

7 A. Yes, ma'am.

8 Q. Okay. And I just want to make sure that
9 this -- that -- that this is clear because I'm not sure
10 that it's what you answered before. But let -- let's make
11 sure. You tell me if I'm wrong. If ITS (sic) had provided
12 the instructions that you believe they should have to the
13 Camden County employees about maintaining and inspecting
14 the trash compactor, how -- how does that affect your
15 opinion, if it does, about why the fire suppression system
16 failed, not what caused the fire but why the fire
17 suppression system failed?

18 A. I don't know why the fire suppression
19 system failed. I haven't offered an opinion as to a
20 specific cause.

21 Q. So you don't have any opinion as to what effect
22 ITS (sic) not providing any maintenance or inspection
23 information to Camden County had on the failure of the fire
24 suppression system?

25 A. Fire suppression systems should be maintained and
26

1 inspected to maintain their -- their functionality. That's
2 good practice and it's required.

3 Q. Sure.

4 A. And that information should have been made aware
5 to Camden County to maintain the system in a functional
6 state both in terms of their daily inspections as well as
7 regular maintenance and service by -- by a supplier. The
8 purpose of that -- that work is to prevent impairments that
9 cause the system not to function when -- when called for.
10 So -- so the extent that those inspections may or may
11 not -- may -- were not done and service was not done
12 provide an opportunity for any defect that I can't define
13 to exist that caused the system to fail to operate when
14 called for.

15 Q. So you're not able to tell us what effect, if
16 any, ITS (sic) not providing that information to Camden
17 County had on the failure of the fire suppression system,
18 correct?

19 A. That's correct. Because they don't know what the
20 specific failure was.

21 Q. When y'all were doing the March '06
22 inspection did Mister - and I can't say his name
23 right - Tijerina -- is that right --

24 A. That's --

25 Q. -- did Mr. Tijerina take anything with him when
26

1 he left the landfill?

2 A. I believe he took components of the fire
3 suppression system.

4 Q. What components did he take with him?

5 A. Those that were removed from the machine you'll
6 have to get the list from him but I know it included the
7 actuator in the cab, tanks and cylinders and some
8 associated distribution piping I believe.

9 Q. And what's your understanding of who removed
10 those items?

11 A. I believe it was Mr. Tijerina and I may have
12 assisted. I don't recall specifically.

13 Q. And was that done in March of 2006, the component
14 parts being removed --

15 A. I don't --

16 Q. -- from the compactor?

17 A. I don't remember. I don't remember. I don't
18 remember when it was done.

19 Q. Could it have been done before March?

20 A. It could have.

21 Q. Could have been done when y'all were there in
22 November of '05?

23 A. That's possible.

24 Q. What was the reason for removing those parts and
25 taking them with you -- Mr. Tijerina taking them?

26

1 A. I -- I think to protect those parts from any
2 further disruption or -- or -- or decay or -- or
3 other -- other inspections. I know I -- I wanted to take
4 the manual assembly and protect that because I wanted to
5 inspect that further.

6 Q. Did you do anything with those component parts as
7 part of your work on this case?

8 A. The only thing I did was visually inspect the
9 plunger assembly for bent pins and for its functionality
10 which I did not do in November or March. I didn't move
11 anything in -- in that time.

12 Q. And when you fiddled with the plunger after March
13 of '06 you convinced or you satisfied yourself that there
14 was no plunger problem due to a bent pin, right?

15 A. That's correct.

16 Q. And -- and just so I'm clear the reason that
17 you've written in your report and it's your opinion that
18 Mister -- that Integrated did not conduct the work that
19 they did on April 26 of '05 in accordance with the
20 maintenance requires -- requirements of NFPA 17 and AFEX
21 2000 Installation and Maintenance Manual and further
22 provide substantive written information to Camden County
23 concerning the inspecting and repair including the
24 maintenance report and recommendations such as the need for
25 owner inspections, regular maintenance, and related

26

1 services and inspection of documentation is because you've
2 seen no documentation that that was done; is that correct?

3 A. That's correct.

4 Q. And that's the sole basis for that opinion?

5 A. That's correct.

6 Q. And you've told me that you never talked to

7 Mr. Murray --

8 A. That's correct.

9 Q. -- to know what he might have -- what he says he

10 might've done?

11 A. That's correct.

12 Q. And you certainly never talked to his stepson

13 either?

14 A. That's correct.

15 Q. Okay.

16 MS. AKINS: Thank you.

17 THE WITNESS: You're welcome.

18 DIRECT EXAMINATION

19 BY MR. MILLER:

20 Q. I just want to make sure I understand. None of
21 the component parts from this compactor were removed until
22 after the joint inspection, right?

23 MR. ALLRED: Object to form.

24 MS. AKINS: Object to form. Mischaracterizes his
25 testimony.

26

1 BY MR. MILLER: (Resuming)

2 Q. Do you know the date that the components --

3 A. I --

4 Q. -- were removed?

5 A. Not specifically in my mind right now just here

6 today. I would -- I would defer to Tony and notes.

7 Q. Do you know whether that was after the joint

8 inspection in March?

9 A. I don't recall.

10 Q. Okay.

11 MR. MILLER: I have no further questions.

12 MR. ALLRED: Okay.

13 THE WITNESS: Thank you.

14 MR. ALLRED: Thank you for your time.

15 (Whereupon, the deposition in the above-entitled

16 matter was concluded at approximately 1:50 p.m.)

17

1 C E R T I F I C A T E

2 STATE OF GEORGIA)

3 COUNTY OF GWINNETT)

4 I hereby certify that the foregoing deposition

5 was taken down by me, as stated in the caption; and the

6 questions and answers were reduced to print by me; that the

7 foregoing pages 4 through 130 represent a true, correct,

8 and complete transcript of the evidence given on March 21,

9 2008, by the witness, DANIEL ARNOLD who was first duly

10 sworn by me; that I am not a relative, employee, attorney

11 or counsel of any of the parties; am not a relative or

12 employee of attorney or counsel for any of said parties;

13 nor am I financially interested in the outcome of the

14 action.

15 This the 24th day of March, 2007.

16

1 E R R A T A S H E E T

2 I have read the within and foregoing pages
3 numbered 4 through 130 and no changes are required:

4 This, the ____ day of _____, 2008.

5 _____

6 DANIEL ARNOLD

7 Sworn to and subscribed before me, this ____ day

8 of _____, 2008.

9 _____

10 Notary Public

11 - - -

12 I have read the within and foregoing pages 4
13 through 130 and the following changes are required as a
14 result of the transcription thereof:

15 Page ____ Line ____: _____

16 Page ____ Line ____: _____

17 Page ____ Line ____: _____

18 Page ____ Line ____: _____

19 Page ____ Line ____: _____

20 _____

21 DANIEL ARNOLD

22

23 Sworn to and subscribed before me, this ____ day

24 of _____, 2008.

25 _____

26 Notary Public

27